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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 CHEVRON CORPORATION,

4 Plaintiff,

5 v.

11 Cv. 0691 (LAK)

6 STEVEN R. DONZIGER, et al.,

7 Defendants.

8 -----x

November 18, 2013
9:35 a.m.

10 Before:

11 HON. LEWIS A. KAPLAN

District Judge

12 APPEARANCES

13 GIBSON, DUNN & CRUTCHER LLP
14 Attorneys for Plaintiff

15 BY: RANDY M. MASTRO
ANDREA E. NEUMAN
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23 GOMEZ LLC
Attorneys for Defendants Hugo Camacho, Javier Piaguaje
24 BY: JULIO C. GOMEZ
25

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(Trial resumed)

THE COURT: Good morning.

What is next? Do you have a witness?

MR. GOMEZ: Yes. Good morning, your Honor.

THE COURT: Good morning.

MR. GOMEZ: Defendants call defendant Javier Piaguaje Payaguaje.

JAVIER PIAGUAJE PAYAGUAJE,

called as a witness by the defendants,

having been duly sworn, through Spanish

interpreter, testified as follows:

THE DEPUTY CLERK: State your name for the record.

THE WITNESS: Javier Piaguaje.

DIRECT EXAMINATION

BY MR. GOMEZ:

Q. Good morning, Mr. Piaguaje.

A. Good morning.

MR. GOMEZ: Your Honor, may I approach?

THE COURT: Yes.

MR. GOMEZ: Your Honor, I have handed the witness Defendants' Exhibit 1800 and a copy of the exhibits that are referenced therein.

THE COURT: Let's separate them. Defendants' Exhibit 1800 will be the statement.

MR. GOMEZ: Yes, your Honor.

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Piaguaje - direct

1 Q. Mr. Piaguaje, would you please take a look at Defendants'
2 Exhibit 1800 that is before you, sir? The first eight pages
3 are in Spanish, followed by an English translation and a
4 certificate of translation.

5 Sir, do you recognize this document?

6 A. Yes.

7 Q. What is this document, sir?

8 A. This document is my testimony.

9 Q. Sir, would you please turn to page 8 of the document?

10 Do you see a signature there, sir?

11 A. Yes.

12 Q. Is that your signature?

13 A. Yes, sir.

14 Q. Did you review this document before you signed it, sir?

15 A. Yes.

16 Q. When you reviewed it and signed it, were all of the
17 statements therein true and accurate to the best of your
18 knowledge?

19 A. Yes, sir.

20 Q. And as of now, do all of those statements remain true and
21 accurate?

22 A. Yes.

23 MR. GOMEZ: Your Honor, at this time, I would like to
24 move in Defendants' Exhibit 1800.

25 Paragraph 13 references five exhibits: Defendants'

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Piaguaje - direct

1 Exhibit 227, 229, 231, 234 and 236. I would ask that all of
2 those also be moved in at this time.

3 THE COURT: Well, 1800 is received on the same basis
4 as other statements, that is, subject to objections that will
5 be, I take it, filed if they haven't been already.

6 Right, Mr. Brodsky?

7 MR. BRODSKY: I believe they have been filed by us,
8 but if they haven't yet yesterday, they will be this morning,
9 unless your Honor wants to hear from us on the objections
10 specifically on that basis.

11 (Plaintiff's Exhibit 1800 received in evidence)

12 THE COURT: Not now. The exhibits that were handed
13 up, what about that Mr. Brodsky?

14 MR. BRODSKY: These are a select portion of the
15 asamblea minutes that the defendants produced in selective
16 fashion weeks ago, prior to the start of the trial, having
17 denied Chevron's repeated requests and subpoenas for the
18 production of documents falling squarely, these falling
19 squarely within those subpoenas. Your Honor has that motion
20 before you with respect to redactions that have been made in
21 some of the asamblea minutes. So our objections are as follows
22 in sum.

23 First, it appears that they are using these asamblea
24 minutes as a sword and a shield. They are shielding what they
25 don't want to be disclose, and they are selectively producing

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Piaguaje - direct

1 the minutes that they believe help their case. And your Honor
2 has a sanctions opinion that lays out a lot of the arguments
3 that they make which are frivolous.

4 Second, many of the items in here are hearsay within
5 hearsay, statements made by certain people about actions that
6 are being taken or taken. So there may be some problems with
7 respect to them on that basis as well.

8 Finally, your Honor, we have our motion before you
9 seeking to view some of the minutes that have been redacted.
10 Some of them may complete these minutes. It's hard to tell
11 from just receiving a subset.

12 THE COURT: You want to be heard, Mr. Gomez?

13 MR. GOMEZ: Yes, your Honor.

14 To begin with, none of the minutes that are attached
15 to Mr. Piaguaje's statement contain redacted materials.

16 In addition, as we have stated before, defendants, Mr.
17 Piaguaje and Mr. Camacho, do not control the asamblea. They
18 don't have control over these documents. We have requested all
19 of the minutes of the asamblea to be produced here. We have
20 not provided anyone with instructions to select which minutes
21 to be provided to us or not. And we have produced all of the
22 minutes we have received, including those that contain
23 privileged material, which currently has been filed with the
24 Court for in camera review on the privilege redactions.

25 In terms of hearsay, I would say that these documents

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Piaguaje - direct

1 are not being submitted for the truth of the statements that
2 they contain by various persons. They are being submitted for
3 the sole purpose of demonstrating that certain matters were
4 discussed at the meetings that Mr. Piaguaje was in attendance
5 in and certain decisions were taken.

6 Now, whether action in conformance with those
7 decisions was actually undertaken is a different question. Mr.
8 Piaguaje was present during the meetings, the five minutes that
9 are attached to his statement. He participated in those
10 discussions. And he voted on the decisions that took place at
11 those meetings. That's the limited purpose for their use, and
12 we would ask that they be admitted in evidence.

13 THE COURT: I am not going to rule now. I would note
14 at least this. That to the extent they are offered for the
15 purpose of demonstrating that certain matters were discussed at
16 the meetings, they are offered for the truth of the statements
17 contained therein, and they are therefore hearsay, but I will
18 consider that further in the fullness of time. Decision is
19 reserved on the exhibits.

20 I note, I think, please correct me if I am wrong, that
21 the January 15 minutes are not among those you're offering.

22 MR. GOMEZ: That is correct. Not with this witness.

23 THE COURT: All right. Let's proceed.

24 MR. GOMEZ: Mr. Brodsky, I assume I don't need to
25 establish through each one that he was present for these five,

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Piaguaje - direct

1 and I can hand over the witness.

2 THE COURT: I'm sorry?

3 MR. GOMEZ: I don't think there is a dispute that Mr.
4 Piaguaje was present during the five meetings that are
5 referenced in the statement. I can either do a small direct
6 and confirm that or he can stipulate that particular point and
7 I can hand over the witness.

8 THE COURT: Mr. Brodsky.

9 MR. BRODSKY: We have never received these minutes
10 until recently before trial. There was a deposition of Mr.
11 Piaguaje made this year. He was never questioned about any
12 minutes because we didn't have any. I have no idea whether or
13 not Mr. Piaguaje was present simply because the document says
14 it's so. So I think if Mr. Gomez wants to establish that Mr.
15 Piaguaje was present, he should do so.

16 THE COURT: Go ahead, Mr. Gomez.

17 BY MR. GOMEZ:

18 Q. Mr. Piaguaje, you have before you Defendants' Exhibit 227.
19 Would you please locate that exhibit?

20 MR. GOMEZ: Your Honor, may I approach so I can help
21 the witness separate everything out?

22 THE COURT: Yes.

23 A. Which one?

24 Q. 227.

25 Mr. Piaguaje, I would like to direct your attention to

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Piaguaje - direct

1 Defendants' Exhibit marked DX 0227. Do you have that in front
2 of you? The number appears in the lower right-hand corner.
3 The Spanish version of that appears on page 6 of 9. Do you
4 have that before you, sir?

5 A. Yes.

6 Q. Sir, would you please take a moment to look at that
7 document and tell me if you recognize it?

8 Mr. Piaguaje, do you recognize the document, sir?

9 A. Yes.

10 Q. What is this document, sir?

11 A. This document is the minutes of the assembly in which we
12 reached a resolution.

13 Q. At the top paragraph of this document, there is a reference
14 to March 10, 2012. Were you present at this meeting on March
15 10, 2012, sir?

16 A. Yes.

17 Q. Why were you there?

18 A. I was here because I am the president of the nationality so
19 I had to represent them here.

20 Q. Sir, does this document accurately reflect the statements
21 that were made and the decisions that were taken at this
22 meeting?

23 A. Yes.

24 MR. GOMEZ: I would move in Exhibit 227.

25 THE COURT: The decision is reserved.

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Piaguaje - direct

1 Q. Mr. Piaguaje, I would like to direct your attention to
2 exhibit marked 0229 that is before you. The Spanish language
3 of this exhibit appears on the last page.

4 Sir, I would ask you to look at this document and tell
5 me if you recognize it?

6 Mr. Piaguaje, do you recognize this document,
7 Defendants' Exhibit 229?

8 A. Yes.

9 Q. What is this document, sir?

10 A. This is also minutes in which we make decisions in the
11 meeting.

12 Q. This document makes reference to the date April 15, 2011.
13 Were you present for this meeting, sir?

14 A. Yes.

15 Q. Does this document accurately reflect the discussions and
16 the decisions made during that meeting?

17 A. Yes, sir.

18 MR. GOMEZ: I would ask to move in Defendants' Exhibit
19 229.

20 THE COURT: Decision is reserved.

21 Q. Mr. Piaguaje, I would now like to direct your attention to
22 Defendants' Exhibit 231. The Spanish language of this exhibit
23 appears on page 5 of 7.

24 Would you please take a moment to look at that
25 document and tell me if you can recognize it?

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Piaguaje - direct

1 Do you recognize Defendants' Exhibit 231, sir?

2 A. I'm still reading it.

3 Q. Do you recognize Defendants' Exhibit 231, sir?

4 A. Yes.

5 Q. What is it?

6 A. It is also the minutes from the assembly.

7 Q. This document makes reference to the dates of February 17
8 and 18 of 2011. Were you present for this meeting, sir?

9 A. Yes.

10 Q. Does this document accurately reflect what was stated and
11 decided at that meeting?

12 A. Yes.

13 MR. GOMEZ: I would ask to move in Defendants' Exhibit
14 231.

15 THE COURT: Decision is reserved.

16 Q. Mr. Piaguaje, I would like to direct your attention to
17 Defendants' Exhibit 234 in front of you. The Spanish language
18 version appears on page 4 of 5 of this exhibit.

19 Would you kindly take a moment to look at that
20 document and tell me if you recognize what it is, sir?

21 Mr. Piaguaje, do you recognize Defendants' Exhibit
22 234?

23 A. Yes.

24 Q. What is it, sir?

25 A. This is regarding a meeting.

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Piaguaje - direct

1 Q. A meeting of what, sir?

2 A. This document is regarding this meeting in which we decide
3 the working points.

4 Q. When you say "we," who are you referring to?

5 A. What was that again?

6 Q. When you say "we," who are you referring to?

7 A. Well, us, for example, the assembly.

8 Q. This document makes reference to the date March 21, 2011.

9 Were you present on that day for this meeting?

10 A. Yes.

11 Q. Do these minutes accurately reflect what was stated and
12 what was decided during that meeting, sir?

13 A. Yes, sir.

14 MR. GOMEZ: I would move into evidence Defendants'
15 Exhibit 234.

16 THE COURT: Decision is reserved.

17 Q. Mr. Piaguaje, I would like to now direct your attention to
18 the last exhibit in front of you, Defendants' Exhibit 236. The
19 Spanish language of which appears on page 4 of 5 of this
20 exhibit.

21 Would you please take a moment to look at that
22 document and tell me if you can recognize it?

23 Mr. Piaguaje, do you recognize Defendants' Exhibit
24 236?

25 A. Yes.

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Piaguaje - direct

1 Q. This document makes reference to a meeting of June 27,
2 2011. Were you present at this meeting on that date?

3 A. Yes.

4 Q. Does this document accurately reflect what was stated and
5 what was decided during that meeting, sir?

6 A. Yes.

7 MR. GOMEZ: Your Honor, I would ask to move into
8 evidence Defendants' Exhibit 236.

9 THE COURT: Decision is reserved.

10 Q. Mr. Piaguaje, whose responsibility was it to prepare all of
11 these minutes for the asamblea?

12 A. The secretary and the coordinators.

13 Q. To your knowledge, were minutes always prepared of all the
14 meetings in which you were in attendance?

15 THE COURT: It might be more helpful if you rephrase
16 that question because an answer "yes" would mean conceivably,
17 as far as he knows, that's true, or it might be an
18 all-encompassing declaration, and it might be significant as to
19 which it is.

20 Q. Mr. Piaguaje, were minutes prepared of all the meetings in
21 which you were in attendance?

22 A. Yes. After the meeting was over, everything that was
23 resolved at the meeting was written down, and then it was read
24 so we could all hear it.

25 Q. Was it the regular practice of the asamblea to prepare

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Piaguaje - direct

1 these minutes?

2 A. Yes, so we could then remember it, have a record.

3 Q. Was it the practice of the asamblea to file and save these
4 documents, these minutes?

5 A. Yes. The secretary.

6 MR. GOMEZ: Your Honor, I pass the witness.

7 THE COURT: Thank you.

8 Mr. Brodsky.

9 MR. BRODSKY: Just a moment so I can set up.

10 CROSS-EXAMINATION

11 BY MR. BRODSKY:

12 Q. Good morning, Mr. Piaguaje.

13 A. Good morning.

14 Q. You know Pablo Fajardo Mendoza?

15 A. Yes.

16 Q. He is an attorney, correct?

17 A. He is an attorney.

18 Q. He is your attorney in the case of *Maria Aguinda v. Chevron*
19 *Corporation* in the Lago Agrio courthouse?

20 A. Yes.

21 Q. And there are 47 plaintiffs, including you, in the case of
22 *Maria Aguinda v. Chevron*?

23 A. Yes.

24 Q. In 2006, sir, you and the other plaintiffs authorized
25 attorney Pablo Fajardo Mendoza to represent you and the other

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Piaguaje - cross

1 plaintiffs as the common attorney, or procurador comun, in the
2 case of *Maria Aguinda v. Chevron Corporation*?

3 A. In 2006, I don't recall.

4 MR. BRODSKY: May I approach, your Honor?

5 THE COURT: All right.

6 Q. Mr. Piaguaje, I am going to show you two documents,
7 Plaintiff's Exhibit 323 in evidence and Plaintiff's Exhibit
8 323B in evidence. If you wouldn't mind, I am going to direct
9 your attention to a particular portion of the document.

10 With respect to 323B, you see the second document I
11 handed you, the larger of the two?

12 Do you have that in front of you, sir?

13 MR. BRODSKY: May I approach to help him identify the
14 document?

15 THE COURT: Yes.

16 Q. If you would take a look at the second page, Mr. Piaguaje,
17 of that very document I just handed you, do you recognize on
18 that document your signature on the seventh column down?

19 THE COURT: I think you meant row.

20 MR. BRODSKY: Row. Thank you.

21 A. Yes.

22 Q. This is something you signed authorizing Pablo Fajardo to
23 represent you in the Lago Agrio Chevron case, correct?

24 A. Yes.

25 Q. Then, sir, since that time, 2006 -- you can put the

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Piaguaje - cross

1 document down, Mr. Piaguaje. Since that time, 2006, Pablo
2 Fajardo has been one of the lawyers representing you in the
3 Lago Agrio Chevron case?

4 A. Yes.

5 Q. Then in 2006, you also signed a document -- withdrawn.

6 In 2006, sir, you gave Mr. Fajardo the authority to
7 file motions and make presentations on behalf of the Lago Agrio
8 plaintiffs, correct?

9 MR. GOMEZ: Objection to form.

10 THE COURT: Overruled.

11 A. Yes.

12 Q. In 2006, you also gave Mr. Fajardo the authority to waive
13 all the judicial inspections, right?

14 A. I don't recall.

15 Q. You remember the judicial inspections, correct?

16 A. Yes.

17 Q. And you remember Pablo Fajardo telling you that he didn't
18 want judicial inspections conducted anymore?

19 A. No.

20 Q. Mr. Fajardo, did he tell you about any threats being made
21 to the presiding judge of the Lago Agrio Chevron case in
22 2010 -- withdrawn.

23 Did he tell you in 2006, did Mr. Fajardo tell you
24 about any threats being made to the presiding judge in the Lago
25 Agrio Chevron case?

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Piaguaje - cross

1 A. No.

2 Q. In November 2010, you and the other Lago Agrio plaintiffs
3 in the *Aguinda v. Chevron* case approved of each and every
4 action that Mr. Fajardo had undertaken in the case, right?

5 MR. GOMEZ: Objection. Form.

6 THE COURT: Overruled.

7 A. What was that again?

8 Q. In November 2010, Mr. Piaguaje, you and the other Lago
9 Agrio plaintiffs in the *Maria Aguinda v. Chevron* case approved
10 of each and every action that Mr. Fajardo had undertaken in the
11 case, right?

12 A. I don't understand the question exactly.

13 Q. Would you mind moving the microphone a little bit closer to
14 you, Mr. Piaguaje, and speaking into the microphone, if you
15 don't mind?

16 Sir, in November 2010, you signed a document in
17 connection with Pablo Fajardo's representation of you, correct?

18 A. I don't recall.

19 Q. How many documents, sir, have you signed in connection with
20 Mr. Fajardo's representation of you?

21 A. I have signed documents, but I don't recall how many
22 documents I have signed.

23 Q. Mr. Fajardo has asked you to sign some documents over the
24 years?

25 A. We have signed documents when we have granted him power of

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Piaguaje - cross

1 attorney.

2 Q. Do you remember granting him this power of attorney in
3 2010?

4 A. Well, for example, I want to understand exactly the
5 question. I want to understand exactly what power of attorney
6 we had granted because I want to understand the question
7 exactly.

8 Q. Sir, you just said, we have signed documents when we have
9 granted him, Pablo Fajardo, power of attorney. What did you
10 mean by power of attorney?

11 A. So that he can get -- well, so that he can defend part of
12 us, the plaintiffs, what we are asking for regarding the
13 contamination.

14 MR. BRODSKY: May I approach, your Honor?

15 THE COURT: Yes.

16 Q. Mr. Piaguaje, let me show you Plaintiff's Exhibit 390 in
17 evidence.

18 MR. BRODSKY: For the record, it's entitled, "Special
19 Power of Attorney and Agency for Judicial Matters. Executed by
20 Armando Wilfrido Piaguaje Payaguaje, et al., in favor of
21 attorney Pablo Estenio Fajardo Mendoza."

22 It's 49 pages. The first 24 pages in English and
23 pages 26 through 49 in Spanish.

24 Q. Mr. Piaguaje, let me direct your attention to a particular
25 page.

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Piaguaje - cross

1 Would you turn to page 34 of 49 at the bottom of the
2 page? Or you could look up at the screen.

3 If we look at this section right here that's
4 highlighted, Mr. Piaguaje, is that your signature on the
5 document?

6 A. Yes, sir.

7 Q. Let me ask you to turn to certain pages.

8 Do you remember signing this document, Mr. Piaguaje?

9 A. Yes, but I don't recall the year. I mean, I did sign it,
10 but I don't recall the year. I don't have the documents with
11 me, but I don't recall the year, but this is my signature.

12 Q. I understand Mr. Piaguaje. Mr. Piaguaje, before you signed
13 it, you read the document, right?

14 A. Yes. But no -- of course, it was explained to me a little.

15 Q. Mr. Piaguaje, you read your witness statement before you
16 signed that, correct, in connection with this case?

17 MR. GOMEZ: Objection. Asked and answered.

18 THE COURT: Overruled.

19 A. Regarding my testimony from today?

20 Q. Yes, sir. This morning, when Mr. Gomez showed you Defense
21 Exhibit 1600, your witness statement -- 1800, you read that
22 document before you signed it?

23 A. Yes.

24 Q. And looking at this document 390 --

25 MR. BRODSKY: Your Honor, just for the record, we will

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Piaguaje - cross

1 move into evidence 323 and this document 390.

2 THE COURT: Aren't they in?

3 MR. BRODSKY: I thought they were in, but I received a
4 note from my colleagues to move them in.

5 THE COURT: Are you including 323B or not?

6 MR. BRODSKY: And 323B as well.

7 THE COURT: Any objection?

8 MR. GOMEZ: No objection.

9 MR. FRIEDMAN: No.

10 THE COURT: They are received.

11 (Defendant's Exhibits 323, 323B and 390 received in
12 evidence)

13 Q. Let me ask you, Mr. Piaguaje, on page 29 of the document in
14 Spanish -- we can put it up on the screen for you in Spanish on
15 the left-hand side, page 4. So on one side 4 and the other
16 side page 49.

17 Directing your attention to where it says, Second,
18 special power of attorney, do you see that?

19 A. Yes.

20 Q. This is where you're giving Mr. Fajardo the power of
21 attorney for judicial matters, correct?

22 A. Yes.

23 MR. BRODSKY: Where it says "the principals," right
24 over here, can we highlight that? Down a little bit below.

25 Q. Do you see where it says, "The principals," Mr. Fajardo may

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Piaguaje - cross

1 on behalf of the principals appear before judges or courts of
2 justice, arbitration or mediation in Ecuador, in the United
3 States of America, or any other country to defend the interests
4 of the principals?

5 A. Yes.

6 Q. That's where you were giving Mr. Fajardo the power to
7 represent you and the other Lago Agrio plaintiffs in the Lago
8 Agrio Chevron case, right, Mr. Piaguaje?

9 MR. GOMEZ: Objection.

10 THE COURT: Sustained.

11 Q. Mr. Piaguaje, you authorized with this power of attorney
12 Mr. Fajardo to appear before courts throughout the world,
13 correct?

14 A. Yes.

15 Q. And Mr. Fajardo on your behalf, and on behalf of the other
16 Lago Agrio plaintiffs, could seek to get the judgment
17 recognized around the world, right?

18 A. Yes.

19 Q. You haven't revoked Mr. Fajardo's power of attorney to seek
20 recognition of the judgment in the Lago Agrio Chevron case,
21 right?

22 A. What was that?

23 Q. Mr. Fajardo still has the power to represent you and the
24 other Lago Agrio plaintiffs around the world to get the Lago
25 Agrio Chevron judgment recognized?

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Piaguaje - cross

1 MR. GOMEZ: Objection. Form.

2 THE COURT: Overruled.

3 A. Yes.

4 Q. Sir, let me direct your --

5 THE COURT: Just a second. It's not just a matter of
6 what the documents says. It's a matter of whether this
7 gentleman has ratified what is going on.

8 Q. Mr. Piaguaje, let me ask you to look at the bottom of this
9 document, the last sentence.

10 MR. BRODSKY: Can we highlight from "the" through the
11 bottom?

12 Q. Would you read that silently to yourself, Mr. Piaguaje,
13 that last sentence?

14 A. OK. I have read it.

15 Q. Mr. Piaguaje, in this document that you signed, you
16 approved of each and every one of the actions undertaken by
17 attorney Pablo Fajardo Mendoza in the Lago Agrio Chevron case,
18 right?

19 MR. GOMEZ: Objection.

20 A. Yes.

21 THE COURT: Overruled. The same point I made a minute
22 ago.

23 Q. You approved of each and every one of the actions
24 undertaken by Mr. Fajardo in all the courts in which he
25 represented you, correct?

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Piaguaje - cross

1 A. Yes.

2 Q. And if we go to the next page?

3 MR. BRODSKY: And if we can highlight where it begins
4 "all financial" through the end of the sentence?

5 You see that on the top? It says "all financial
6 administrative acts."

7 Q. Mr. Piaguaje, you approved of all the financial and
8 administrative acts which Mr. Fajardo carried out for your
9 defense in the Lago Agrio Chevron case?

10 A. Yes.

11 (Continued on next page)

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Piaguaje - cross

1 Q. And you approved of all the financial acts Mr. Fajardo
2 carried out through other people that he legally authorized on
3 your behalf?

4 MR. GOMEZ: Objection.

5 THE COURT: Overruled.

6 A. Yes.

7 Q. That includes Mr. Fajardo -- withdrawn.

8 That includes, Mr. Piaguaje, how Mr. Fajardo raised
9 money to litigate the Chevron, the Lago Agrio Chevron case?

10 A. I do not understand that question.

11 Q. You have approved of how Mr. Fajardo and others working
12 with him have raised money in connection with the Lago Agrio
13 Chevron case?

14 MR. GOMEZ: Objection.

15 THE COURT: Overruled.

16 A. No.

17 Q. Does Mr. Fajardo tell you how the money is raised?

18 A. Yes, to pay the attorneys for that defense.

19 Q. And you know Mr. Fajardo is working with other people to
20 raise money to pay for lawyers?

21 A. Yes, so that they will move forward with this process, with
22 this case, the trial.

23 Q. And you approve of Mr. Fajardo's actions to raise money,
24 correct?

25 MR. GOMEZ: Objection.

DBILCHE2

Piaguaje - cross

1 THE COURT: Overruled.

2 A. Yes, because we want to accomplish our goal.

3 Q. Let me ask you to turn to two pages later, page 7 in
4 English, and page 32 in Spanish. Let me direct your attention
5 to where it says three term and if we can highlight that
6 sentence.

7 Mr. Piaguaje, you agree with me that you and the other
8 Lago Agrio plaintiffs gave Mr. Fajardo this power of attorney
9 for an indefinite period of time?

10 A. I don't understand Spanish that well, but still I need to
11 know a little more.

12 Q. Mr. Piaguaje, when you gave Mr. Fajardo this power in 2010,
13 there was no termination or end date?

14 A. Right, for what?

15 Q. To represent you, correct?

16 A. No, there was no end.

17 Q. And this, under this power of attorney, you and the other
18 Lago Agrio plaintiffs had the right to revoke Mr. Fajardo's
19 power, correct?

20 A. Yes, we were -- we could do that. But if we did that, then
21 we wouldn't have, we would no longer have a person that would
22 be helping us.

23 Q. You would no longer have the person you want most to
24 represent you; is that right?

25 A. What was that again?

DBILCHE2

Piaguaje - cross

1 Q. Pablo Fajardo is the person you most want -- withdrawn.

2 Pablo Fajardo, Pablo Fajardo is the person you and the
3 other Lago Agrio plaintiffs have chosen as the person best
4 suited to represent you?

5 A. Yes.

6 Q. You know there are other lawyers in Ecuador?

7 A. Yes.

8 Q. You've chosen him?

9 A. Yes.

10 Q. You trust him?

11 A. Yes.

12 Q. You like what he's done for you so far?

13 MR. GOMEZ: Objection, vague.

14 THE COURT: Sustained.

15 Q. You approve -- withdrawn.

16 Now, you've spoken with Mr. Fajardo about the Lago
17 Agrio Chevron litigation at several meetings of the asamblea
18 over the years, right?

19 A. Yes, he has reported during the assembly.

20 Q. And outside of those asamblea meetings, you've met with him
21 in person on several occasions?

22 A. No.

23 Q. Is it your testimony that outside the asamblea meetings
24 you've never met with Mr. Fajardo?

25 A. Well, yes, stops by to say hello.

DBILCHE2

Piaguaje - cross

1 Q. And besides stopping by to say hello, you've had meetings
2 with him outside the assembly, right?

3 A. No, because I live inside, I live in the community. I'm
4 hardly ever outside.

5 Q. On sometimes you're outside the community, right?

6 A. Yes.

7 Q. And on some occasions you actually have traveled abroad?

8 A. Me?

9 Q. Yes, you, sir.

10 A. Yes.

11 Q. And there are some occasions when you've had meetings with
12 Mr. Fajardo outside your community?

13 A. You mean just Pablo and myself?

14 Q. Pablo, yourself, and other people, or just Pablo and
15 yourself.

16 A. We haven't had meetings like that like outside of the
17 meeting, nothing, no.

18 MR. BRODSKY: May I approach, your Honor?

19 THE COURT: Yes.

20 Q. Mr. Piaguaje, let me show you Plaintiff's Exhibit 2407R.
21 Let me ask you to turn to the last page. Do you recognize your
22 signature on that, sir?

23 A. Yes.

24 Q. Is it accurate when it says that you certified that before
25 signing this, the contents of the document were translated to

DBILCHE2

Piaguaje - cross

1 you in Spanish?

2 A. Let me read that for a minute.

3 Q. Please, sir.

4 A. Yes.

5 Q. Am I correct, sir, that you read that -- it's accurate that
6 you, the contents of this document were translated to you in
7 Spanish before you signed it?

8 A. Yes.

9 Q. And it's correct, sir, that in that certification, you
10 certified that, among other things, the response No. 6 in this
11 document contained facts and matters that were within your
12 personal knowledge?

13 A. Yes.

14 Q. Can I ask you to --

15 MR. BRODSKY: Your Honor, I just want to read
16 something into the record on page 24. Page 24, this paragraph
17 right here, Randall, if we could blow that up.

18 THE COURT: And you're offering that?

19 MR. BRODSKY: I'm offering the paragraph, yes, the
20 supplemental response to interrogatory No. 6 between these
21 three paragraphs right there.

22 THE COURT: Any objection?

23 MR. GOMEZ: No, your Honor.

24 MR. FRIEDMAN: No.

25 THE COURT: Received.

DBILCHE2

Piaguaje - cross

1 (Plaintiff's Exhibit 2407R, specified paragraphs
2 received in evidence)

3 MR. BRODSKY: Should I read it, your Honor, for the
4 record?

5 THE COURT: It's not necessary.

6 MR. BRODSKY: Okay. We can take that down. Thank
7 you.

8 Q. You know Steven Donziger, correct?

9 A. Yes.

10 Q. You see him in this courtroom?

11 A. Yes.

12 Q. Without pointing, would you tell us where he is by
13 describing an article of clothing that he's wearing and where
14 he is in the courtroom?

15 A. He's sitting beside my attorney, Julio Gomez.

16 THE COURT: Indicating Mr. Donziger.

17 Q. Mr. Fajardo told you that he hired Mr. Donziger to work on
18 your behalf?

19 A. Well, we have authorized my attorney, Pablo Fajardo, to do
20 that.

21 Q. And Mr. Fajardo told you that he hired Mr. Donziger to work
22 on your behalf, right?

23 A. Well, he didn't tell me on my behalf for myself as a
24 plaintiff, but for the group, for the group of plaintiffs.

25 Q. Mr. Fajardo told you he had hired Mr. Donziger to represent

DBILCHE2

Piaguaje - cross

1 you and all the other Lago Agrio plaintiffs?

2 A. Yes.

3 Q. And you met Mr. Donziger in person several years ago,
4 right?

5 A. Yes.

6 Q. In fact, you met Mr. Donziger on at least three occasions,
7 right?

8 A. Yes.

9 Q. Several years ago, correct?

10 A. Years back.

11 Q. And the purpose of each of those meetings -- withdrawn.

12 The purpose of each of those three meetings that you
13 had with Mr. Donziger was to discuss the lawsuit against
14 Chevron in Lago Agrio?

15 A. Well, when I, well, at that time when I met him, it's not
16 like I knew all of that much. But what we did know and what
17 all of us did know is all about the contamination and the fact
18 that we all wanted to get help to resolve that contamination,
19 which is what we were doing.

20 Q. Sir, is the answer to my question that the purpose of each
21 of those three meetings that you had with Mr. Donziger was to
22 discuss the lawsuit against Chevron in Lago Agrio yes?

23 A. Not all of them, because it's not like I had a meeting
24 together with Mr. Steven, but it was --

25 Q. Sorry.

DBILCHE2

Piaguaje - cross

1 A. -- I did not have a direct conversation with Steven.

2 Q. You were in a meeting with Mr. Donziger and other
3 individuals?

4 A. Yes, but I wasn't there with him for a long time, just for
5 a while. But, yes, I did see him there.

6 Q. And putting aside the amount of time, Mr. Piaguaje, that
7 you spent with Mr. Donziger and others on the three occasions
8 that you were meeting with Mr. Donziger and other people, the
9 purpose was to discuss the lawsuit against Chevron in Lago
10 Agrio, right?

11 A. Yes.

12 Q. Now, you know, sir, that documents have been filed in
13 foreign countries seeking recognition of the judgment issued in
14 the Lago Agrio Chevron case?

15 A. I don't understand that very well.

16 Q. Are you aware that your -- withdrawn.

17 Are you aware that your name and the name of the other
18 Lago Agrio plaintiffs appears on a document filed in Brazil
19 seeking the recognition of the judgment in Lago Agrio?

20 A. Well, I haven't exactly seen the document, but I was told,
21 they explained something about that. I know that.

22 Q. Who's they?

23 A. They were talking at the assembly.

24 Q. Who is they?

25 A. For example, Pablo was speaking, but it was almost like the

DBILCHE2

Piaguaje - cross

1 time to leave and I was already on my way out so I wasn't able
2 to hear it all very well.

3 Q. When you say Pablo, you mean Pablo Fajardo?

4 A. Yes.

5 Q. And I take it that because you were on your way out of that
6 meeting -- withdrawn.

7 Was it towards the end of the meeting that Mr. Fajardo
8 reported to you and others that a lawsuit was filed in Brazil
9 seeking recognition of the judgment?

10 A. That I have heard.

11 Q. Who did you hear that from?

12 A. It's what I was just saying about the meeting, but I have
13 not seen documents.

14 Q. I see. Mr. Fajardo reported -- withdrawn.

15 Mr. Fajardo told you and others at this meeting that a
16 document was filed in Brazil seeking recognition of the
17 judgment?

18 A. Yes.

19 Q. And prior to Mr. Fajardo informing you of that, there
20 wasn't a vote by the assembly, right?

21 MR. GOMEZ: Objection, vague.

22 THE COURT: Overruled. Sustained. Be more specific.

23 Q. Mr. Piaguaje, prior to Mr. Fajardo telling you that papers
24 were being filed in Brazil seeking recognition of the judgment,
25 you and others at this meeting did not take a vote about

DBILCHE2

Piaguaje - cross

1 whether to file those papers?

2 A. Well, no, I haven't seen that vote, but we do want to
3 accomplish what we are seeking.

4 Q. And Mr. Fajardo has the power that you've conferred on him
5 and others in the Lago Agrio case have conferred on him to file
6 these lawsuits around the world to seek recognition of the
7 judgment?

8 A. Yes.

9 Q. And you know, sir, that Mr. Fajardo -- withdrawn.

10 Mr. Fajardo, did Mr. Fajardo tell you that he and
11 others filed a claim against Chevron in Canada?

12 A. Well, the truth is I can talk about what I know. We have,
13 we have said like here the big company, they don't want to
14 admit, they don't want to pay. We want to find a way.

15 Q. Mr. Piaguaje, let me interrupt you because my question is,
16 sir, did Mr. Fajardo tell you that he and others filed a claim
17 against Chevron in Canada?

18 A. I'm -- I don't understand what the question is saying.

19 Q. Were you present for any discussions, sir, with Mr. Fajardo
20 and others in which Mr. Fajardo discussed that papers were
21 filed in Canada seeking recognition of the judgment in Lago
22 Agrio?

23 A. Yes, I've heard.

24 Q. Did Mr. Fajardo tell you that?

25 A. Yes.

DBILCHE2

Piaguaje - cross

1 Q. And did Mr. Fajardo tell you also that a petition was filed
2 in Argentina seeking recognition of the Lago Agrio judgment?

3 A. Yes, I have heard.

4 Q. And isn't it true, sir, that Mr. Fajardo has told you and
5 the other Lago Agrio plaintiffs that he will continue to seek
6 enforcement of this judgment in Lago Agrio in other countries?

7 A. I haven't heard that.

8 Q. Are you aware one way or the other whether there's a list
9 of approximately 30 countries in which Mr. Fajardo and others
10 working with him are trying to -- withdrawn.

11 Are you aware, sir, of a list of approximately 30
12 countries around the world in which Mr. Fajardo and others have
13 said they will seek to enforce the judgment in Lago Agrio?

14 MR. GOMEZ: Objection, privilege, your Honor.

15 THE COURT: Sustained as least at to form and then
16 we'll see what happens.

17 Q. Has Mr. Fajardo spoken to the asamblea about seeking to
18 enforce the Lago Agrio judgment against Chevron in 30 countries
19 around the world?

20 MR. GOMEZ: Objection, privileged.

21 THE COURT: Answer yes or no, please.

22 A. What, 30 countries?

23 Q. Yes.

24 A. No, I haven't heard that.

25 Q. You haven't heard -- do you know who Juan Pablo Saenz is?

DBILCHE2

Piaguaje - cross

1 A. No.

2 Q. Have you heard Mr. Fajardo speaking to the press or the
3 media as recently as November 13, 2013, last week, about trying
4 to get recognition for the judgment in Lago Agrio around the
5 world?

6 MR. GOMEZ: Objection, relevance.

7 THE COURT: Overruled. Goes to threatened irreparable
8 injury at least.

9 A. No, I'm not updated. I didn't understand.

10 Q. Did you not understand my question, sir?

11 A. Yes.

12 Q. Have you heard Pablo Fajardo speaking to the media, the
13 press, about --

14 A. No, I haven't heard, no, no.

15 Q. Okay. Now you're a defendant in this case, in this RICO
16 action, in this courthouse, correct?

17 A. Yes.

18 Q. And Chevron has filed a lawsuit against you and other
19 people, correct?

20 A. Yes.

21 Q. And you of course have read the allegations against you,
22 right?

23 A. Excuse me, I didn't understand your question exactly, the
24 question.

25 Q. You know -- withdrawn.

DBILCHE2

Piaguaje - cross

1 You're aware of the allegations that Chevron has made
2 in this case, in this courthouse, against you, sir?

3 A. Regarding the whole trial?

4 Q. Sir, you're aware Chevron has filed allegations in a
5 complaint against you?

6 A. Where, in Ecuador?

7 Q. In this courthouse.

8 A. No.

9 Q. You have lawyers who have been representing you in this
10 case, right?

11 A. Yes.

12 Q. Mr. Julio Cruz -- withdrawn.

13 Mr. Julio Gomez is one of your lawyers, correct?

14 A. Yes.

15 THE COURT: Let's take a break here.

16 (Recess)

17 THE COURT: Let's continue.

18 MR. BRODSKY: Thank you, your Honor.

19 Q. Mr. Piaguaje, in addition to Julio Gomez, you've been
20 represented in connection with this case by Larry Veselka,
21 correct?

22 A. Larry?

23 Q. Yes.

24 A. Yes.

25 Q. And Jarrod Stewart as well?

DBILCHE2

Piaguaje - cross

1 A. Yes.

2 Q. Mr. Veselka and Mr. Stewart visited you in Ecuador in
3 connection with this case?

4 A. Yes.

5 Q. And you've received updates about what's happening in this
6 case, correct?

7 A. What do you mean?

8 Q. You have learned about Chevron's allegations against you in
9 this case?

10 A. Complaints.

11 Q. You've learned about those complaints?

12 A. Complaints, yes.

13 Q. And you've discussed those complaints in this case with
14 Pablo Fajardo, correct?

15 MR. GOMEZ: Objection, vague.

16 THE COURT: Overruled.

17 A. No.

18 Q. Hasn't Mr. Fajardo provided you with legal advice in
19 connection with this case?

20 MR. GOMEZ: Objection, privilege.

21 THE COURT: The question doesn't call for the
22 substance. Overruled.

23 Answer yes or no.

24 A. No.

25 MR. BRODSKY: One moment, your Honor.

DBILCHE2

Piaguaje - cross

1 Q. We'll come back to that, Mr. Piaguaje.

2 Did you inform Mr. Fajardo you were coming here to
3 testify?

4 A. This time, for this time, for this testimony?

5 Q. Yes, for this time, this week.

6 A. Yes.

7 Q. And the last time you testified earlier this year in this
8 courthouse, you informed Mr. Fajardo you were testifying,
9 correct?

10 A. Yes.

11 Q. Did you seek Mr. Fajardo's permission to testify?

12 A. Well, I didn't seek it. I was told I had to come here to
13 testify before this judge to testify and that's what I'm doing,
14 testifying to what I know, what is the truth.

15 Q. Did Mr. Fajardo tell you he was not going to testify?

16 A. No.

17 Q. Did Mr. Fajardo inform the asamblea that he was not going
18 to testify?

19 A. No, I didn't hear that.

20 Q. Did the asamblea make any decisions in connection with
21 whether with Mr. Fajardo would come here to testify?

22 A. Well, I have not been involved in the assembly recently. I
23 don't know.

24 Q. When did you stop being involved in the asamblea?

25 A. 2012.

DBILCHE2

Piaguaje - cross

1 Q. When in 2012?

2 A. Well, I've been participating in the meetings in Lago
3 Agrio.

4 Q. When in 2012?

5 A. What do you mean what part?

6 Q. When in 2012 did you stop participating in the asamblea?

7 A. I don't recall exactly the month because it was when, well,
8 I finished my term as president of my nationality in the first
9 half of the month of June.

10 Q. Did you participate in any asamblea meetings this year?

11 A. I don't think so, no, I don't think so.

12 Q. And nobody from the asamblea -- withdrawn.

13 Did you tell Mr. Yanza you were coming here to
14 testify?

15 A. No.

16 Q. Mr. Yanza is the coordinator of the asamblea, correct?

17 A. Yes.

18 Q. Sir, just before we move on to one other topic, I wanted to
19 ask you with respect to the power of attorney, do you remember
20 the questions I asked you and the answers you gave regarding
21 the power of attorney and you gave to Mr. Fajardo?

22 A. Yes.

23 MR. GOMEZ: Objection, form.

24 THE COURT: The objection as to form is overruled.

25 Q. Mr. Piaguaje, since conferring that power of attorney on

DBILCHE2

Piaguaje - cross

1 Mr. Fajardo, you and the other Lago Agrio plaintiffs have never
2 revoked it, correct?

3 A. No.

4 Q. No, you've never revoked it, right?

5 A. Yes.

6 Q. Okay. Mr. Piaguaje, let's go on to one other thing, couple
7 other things.

8 Before we get to the asamblea a little bit, I want to
9 talk a little bit about your background and experience. Let me
10 direct your attention to your declaration. Do you have that in
11 front of you, Defense Exhibit 1800? I always get the number
12 wrong. Here is Defense Exhibit 1800.

13 (Continued on next page)

DBI8CHE3

Piaguaje - cross

1 Q. Let me direct your attention to paragraph 5.

2 MR. BRODSKY: Can we put the English and the Spanish
3 side by side?

4 Q. You testified at your deposition in May of this year in
5 Spanish, right?

6 A. Yes.

7 Q. You wrote your direct testimony today in Spanish, right?

8 A. Yes.

9 Q. And let me direct your attention to page 2, paragraph 7,
10 the last sentence.

11 What were your responsibilities as president of the
12 entire Siekopai nation during those two two-year terms?

13 A. I was president two times.

14 Q. What were your responsibilities?

15 A. Well, the people of my nationality elected me president so
16 that I could obtain benefits for our community.

17 Q. What did you do to obtain those benefits?

18 A. I was making efforts to obtain benefits which we weren't
19 able to obtain yet, regarding issues such as water, education,
20 many other things.

21 Q. You have travelled outside -- withdrawn.

22 You travelled to the United States in 1997, right?

23 A. Yes.

24 Q. That was during your first term as president of the
25 Siekopai nation?

DBI8CHE3

Piaguaje - cross

1 A. Yes.

2 Q. During that trip you visited Miami, right?

3 A. Miami, Boston, and Washington.

4 Q. By Washington you mean, Washington, D.C.?

5 A. Yes.

6 Q. And in 1998 you visited Peru?

7 A. Yes.

8 Q. In 2010, approximately, you visited Venezuela?

9 A. Yes.

10 Q. In 2010, you visited Brazil?

11 A. Yes.

12 Q. And you have an e-mail account, right, Mr. Piaguaje?

13 A. Yes.

14 Q. You have a Facebook account, right?

15 A. That too.

16 MR. BRODSKY: May I approach, your Honor?

17 THE COURT: Yes.

18 MR. BRODSKY: One moment, your Honor. I have just got
19 to do a quick organization here.

20 Let me ask my colleague to do that while I move on to
21 something else.

22 Q. We will get back to your Facebook in a moment, Mr.
23 Piaguaje.

24 Mr. Piaguaje, your Facebook account is in Spanish,
25 right?

DBI8CHE3

Piaguaje - cross

1 A. Yes.

2 Q. We will get back to that in a minute.

3 Staying with your declaration, sir, let me direct your
4 attention to page 2, paragraph 11.

5 What do you mean by settlers in paragraph 11?

6 Sir, what do you mean by settlers?

7 A. Settlers are the people from outside who want to live there
8 in the Amazon region.

9 Q. Would you agree, sir, that the only purpose of the Asamblea
10 de Afectados por Texaco is to address the case in Ecuador
11 against Chevron, right?

12 A. Yes.

13 Q. You mentioned the Tarapoa field at least twice in your
14 declaration, right?

15 THE INTERPRETER: What is the name of the field?

16 MR. BRODSKY: T-A-R-A-P-O-A.

17 Q. Let me direct your attention to paragraph 8. You want
18 Chevron to clean up that field, right?

19 A. Yes.

20 Q. Was the Tarapoa contaminated by Texaco or TexPet?

21 A. At that time, I was young, I didn't do anything. I would
22 say it was the Texaco company.

23 Q. Do you have any idea of who actually operated the Tarapoa
24 field?

25 A. Well, I really cannot say because at that time I didn't

DBI8CHE3

Piaguaje - cross

1 know anything.

2 Q. Sir, have you made any effort, you yourself, to find out
3 who operated the Tarapoa field?

4 A. Yes. I first started to find out about this subject who
5 was causing the spills, I have heard some settlers mention the
6 Texaco company, because that's how I started to find out a bit
7 at a time.

8 Q. Let me direct your attention to the Tarapoa field itself,
9 just isolated to the Tarapoa field. Do you have any personal
10 knowledge as to who contaminated that field?

11 MR. GOMEZ: Objection. Relevance, your Honor.

12 THE COURT: Overruled.

13 A. That's what I told you earlier that some persons, settlers,
14 told me it was Texaco, but I can't tell you personally. That's
15 why I trusted in them that it was Texaco.

16 Q. Sir, the asamblea has nothing to do with addressing
17 contamination by Petroecuador, right?

18 A. To start a trial again?

19 Q. The asamblea, you're a member of, right?

20 A. Yes.

21 Q. The asamblea that has the name Texaco in it, right?

22 A. What do you mean? Of course I hear the title, but what do
23 you mean? I don't know.

24 THE COURT: You're belaboring this point.

25 MR. BRODSKY: Yes, your Honor. Understood.

DBI8CHE3

Piaguaje - cross

1 Q. Is it your testimony, sir, that each affected field, and
2 directing your attention to paragraph 11, each affected field
3 or region is part of the asamblea?

4 MR. GOMEZ: Objection. Form.

5 THE COURT: Overruled.

6 A. What is in my statement, what I have written, for example,
7 in my statement and what is written is what I have seen
8 personally.

9 Q. Are you familiar with the Huaorani?

10 A. Yes.

11 Q. Aren't they one of the indigenous groups in this region?

12 MR. GOMEZ: Objection. Vague.

13 THE COURT: Overruled.

14 A. In Orellana, but on the other side of the Napo River.

15 Q. Would they fall within, your words in paragraph 11,
16 affected field or region or indigenous nation affected by
17 petroleum contamination?

18 MR. GOMEZ: Objection. Form.

19 THE COURT: Overruled.

20 A. Yes.

21 Q. And they are not part of the asamblea, correct?

22 A. Yes, they do belong to it.

23 Q. Sir, isn't it a fact that the Huaorani have sued, filed a
24 lawsuit, against Steven Donziger and the Amazon defense front
25 in this courthouse stating they are not part of the asamblea?

DBI8CHE3

Piaguaje - cross

1 A. Well, I don't know anything about that part.

2 Q. Have you seen any representatives of the Huaorani at your
3 asamblea meetings?

4 A. Yes.

5 Q. When did you see them?

6 A. When I was there in 2012, in early 2012.

7 Q. So it's your testimony, sir, that they are part of the
8 assembly?

9 A. Yes. Because the Huaorani do participate there, at least
10 as far as I saw.

11 Q. Your witness statement, sir, does not mention the Amazon
12 Defense Front, correct?

13 THE COURT: It either does or it doesn't.

14 Q. You're not a member of the Amazon Defense Front, correct?

15 A. No.

16 Q. You have never been a member?

17 A. No.

18 Q. Who runs the Amazon Defense Front?

19 A. The truth is I don't know. It's administered or run by the
20 president of the Amazon Defense Front.

21 Q. Who is the president?

22 A. Well, when I was there, it was always the president Ermel
23 Chavez, but I don't know now.

24 Q. You have agreed to give a portion of the judgment in the
25 Lago Agrio Chevron case to the ADF, the Amazon Defense Front,

DBI8CHE3

Piaguaje - cross

1 right?

2 A. You mean when we win?

3 Q. You understand that a judgment was issued in the Lago Agrio
4 Chevron case, right?

5 A. Yes.

6 Q. And you understand you have agreed, you and the other Lago
7 Agrio plaintiffs, have agreed to give a portion of the judgment
8 in that case to the Amazon Defense Front?

9 A. Are you asking me if I have heard that?

10 Q. I am asking if you agree with me that you have agreed to
11 give a portion of the judgment in the Lago Agrio Chevron case
12 to the Amazon Defense Front?

13 MR. GOMEZ: Objection. Form. Vague.

14 THE COURT: Overruled. There is nothing vague about
15 it.

16 A. No.

17 Q. Sir, is it fair to say you do not want to give the Amazon
18 Defense Front 10 percent or more of the judgment?

19 A. No.

20 THE COURT: Ambiguous.

21 Q. Is that no, you do not want to give the Amazon Defense
22 Front 10 percent or more of the judgment?

23 A. Well, at the moment or up to now, I haven't heard anything
24 about that from my group of giving them 10 percent or anything.
25 I myself haven't heard that.

DBI8CHE3

Piaguaje - cross

1 Q. So in none of the asamblea meetings that you attended,
2 nobody ever informed you that the Amazon Defense Front was
3 going to receive at least 10 percent of the judgment?

4 A. No.

5 Q. Isn't it a fact, sir, that you have ceded all rights to the
6 Lago Agrio judgment to the Amazon Defense Front?

7 MR. GOMEZ: Objection.

8 THE COURT: Overruled.

9 A. I didn't understand your question very well.

10 Q. Sir, isn't it a fact that you have ceded, given up, all
11 rights to the proceeds from the Lago Agrio judgment to the
12 Amazon Defense Front?

13 MR. GOMEZ: Objection. Vague.

14 THE COURT: There is nothing vague about it, sir.
15 Overruled.

16 A. I'm sorry. I don't understand the question.

17 Q. You understand what the Lago Agrio judgment is, correct?

18 A. Yes.

19 Q. You understand that the Lago Agrio judgment has
20 states -- withdrawn.

21 You understand that, according to the Lago Agrio
22 judgment, money will be given to certain people, correct?

23 A. No.

24 Q. You understand that the Lago Agrio judgment -- withdrawn.

25 You understand, sir, that a judge in Lago Agrio issued

DBI8CHE3

Piaguaje - cross

1 a judgment ordering Chevron to pay billions of dollars to
2 certain people and groups, correct?

3 A. I would like to hear the question again, please.

4 MR. BRODSKY: Can we ask the court reporter to read
5 back the question?

6 THE COURT: Yes.

7 (Record read)

8 A. Well, what I don't understand here -- what I understood was
9 that Chevron wanted to pay a judge money. So I am not
10 understanding this question.

11 MR. BRODSKY: Move to strike, your Honor.

12 THE COURT: Stricken, apart from his statement that he
13 doesn't understand the question.

14 Q. Let's do it this way, Mr. Piaguaje. Do you have
15 Plaintiff's Exhibit 2407R? Do you have that in front of you?

16 We will put it on the screen, sir. It's in English
17 anyway.

18 MR. BRODSKY: Can we go to the last page.

19 Q. Sir, do you remember I asked you questions about this
20 certification that you made?

21 A. Yes.

22 Q. And you agree, sir, that you certified that response number
23 11, among others, contain facts within your personal knowledge?

24 A. Yes.

25 MR. BRODSKY: Can we turn to page 29, supplemental

DBI8CHE3

Piaguaje - cross

1 response to interrogatory number 11, and blow up where it says
2 "respondent has ceded."

3 Q. You agree, sir, that you certified that you, the
4 respondent, had ceded all rights to the proceeds from the Lago
5 Agrio judgment to the Amazon Defense Front, correct?

6 MR. GOMEZ: Objection. The witness has been asked and
7 answered the question, and he cannot understand the document
8 that's on the video screen.

9 THE COURT: He has been asked the question many times,
10 and he has repeatedly responded that he doesn't understand it.
11 So that portion of the objection is overruled.

12 The point about the language of course is apt. So
13 let's go to the Spanish. Put them both up there and direct his
14 attention to the Spanish.

15 MR. BRODSKY: I do not have the Spanish version. He
16 certified in the document on page 43 that before signing the
17 responses, the contents were translated to him in Spanish.

18 THE COURT: So you're offering that first sentence of
19 the second paragraph of the supplemental response to
20 interrogatory number 11.

21 MR. BRODSKY: I am, your Honor.

22 THE COURT: Received.

23 (Plaintiff's Exhibit 2407R received in evidence)

24 Q. Sir, when you attended the meetings of the asamblea, they
25 were at Selva Viva's offices, right?

DBI8CHE3

Piaguaje - cross

1 A. Yes, when there were meetings of the committee.

2 Q. You received notification of the meetings by e-mail,
3 correct?

4 A. No, by telephone.

5 Q. Did you ever receive notification of an asamblea meeting by
6 e-mail?

7 A. No.

8 MR. BRODSKY: May I approach, your Honor?

9 THE COURT: Yes.

10 Q. I am showing you, Mr. Piaguaje, a multipage document,
11 Plaintiff's Exhibit 6724 for identification, Bates number JP55.
12 The first page is in English and the third page is the
13 translation in Spanish. So please turn to the third page.
14 It's an e-mail, dated November 8, 2010, from Luis Francisco to
15 a number of e-mail addresses.

16 Have you had a chance to read it?

17 A. Yes.

18 Q. Does your e-mail address appear as a recipient of this
19 e-mail?

20 A. Yes.

21 Q. Does this relate to an asamblea meeting?

22 A. I think it was about a meeting of the committee.

23 Q. A meeting of the committee of the asamblea?

24 A. Yes. Part of the assembly, but only the presidents of the
25 indigenous nations and the settlers.

DBI8CHE3

Piaguaje - cross

1 MR. BRODSKY: We offer 6724.

2 THE COURT: Received hearing no objection.

3 MR. GOMEZ: No objection.

4 MR. FRIEDMAN: No objection.

5 (Plaintiff's Exhibit 6724 received in evidence)

6 Q. Did this committee meeting of the asamblea take place on
7 November 12, 2010?

8 A. I'm not familiar with this document very much, and I don't
9 remember the exact date of when it was.

10 Q. You produced this document, did you not?

11 A. To whom?

12 Q. You gave it to your lawyers who gave it to Chevron
13 Corporation in this case.

14 A. Yes.

15 Q. Do you know whether or not there are minutes -- regardless
16 of whether you remember the exact date, do you know whether or
17 not there are minutes to this meeting that took place in
18 Plaintiff's Exhibit 6724?

19 MR. GOMEZ: Objection. It assumes facts.

20 THE COURT: Overruled.

21 A. Yes. There may be, but I don't remember exactly. When we
22 have meetings, there are minutes taken, but I don't remember
23 the exact date.

24 Q. In collecting documents in connection with this case, did
25 you ask anyone for the minutes of the asamblea meetings?

DBI8CHE3

Piaguaje - cross

1 A. Did I ask the secretary?

2 Q. Or anybody at the asamblea.

3 A. Yes.

4 Q. Who did you ask?

5 A. Once I told Luis I think. No, it was Pablo. I told Pablo
6 to give me the minutes of the meeting so that I can remember
7 because I live far away and I haven't yet gotten them.

8 Q. By Pablo, you mean Pablo Fajardo?

9 A. Yes.

10 MR. BRODSKY: May I approach, your Honor?

11 A. When I say Pablo, it's Pablo Fajardo.

12 Q. Mr. Piaguaje, I am going to show you another document you
13 produced in this case, Plaintiff's Exhibit 6714 for
14 identification, Bates labeled JP 65. The third page is in
15 Spanish Mr. Piaguaje.

16 Do you recognize the document, Mr. Piaguaje?

17 Mr. Piaguaje, do you recognize your e-mail address?

18 A. Yes.

19 Q. That's an e-mail exchange that you had with Luis Yanza,
20 correct?

21 A. Yes.

22 Q. Relating to an asamblea meeting?

23 A. Yes. He sent me these, but this was some time ago, these
24 e-mails back before, and I don't really pay a lot of attention
25 to my e-mail. I read them quickly and then I move on. I don't

DBI8CHE3

Piaguaje - cross

1 spend a lot of time reading e-mail.

2 MR. BRODSKY: We offer 6714.

3 MR. GOMEZ: No objection.

4 MR. FRIEDMAN: No objection.

5 THE COURT: Received.

6 (Plaintiff's Exhibit 6714 received in evidence)

7 Q. Now, sir, directing your attention to Luis Yanza's e-mail
8 to you on November 15, 2010, you remember, sir, there were
9 discussions in the asamblea meetings when you were on the
10 executive committee about legalizing the existence of the
11 asamblea?

12 A. Yes, I do remember that.

13 Q. These discussions started in late 2010, right?

14 MR. GOMEZ: Objection. Vague.

15 THE COURT: Overruled.

16 A. Well, as I said to you earlier, when I was president of my
17 nation, I began attending to these things.

18 Q. And the discussions about legalizing the existence of the
19 asamblea started in the latter half of 2010, correct?

20 MR. GOMEZ: Objection. It calls for a legal
21 conclusion.

22 A. Yes.

23 THE COURT: Overruled.

24 MR. BRODSKY: May I approach?

25 THE COURT: Yes.

DBI8CHE3

Piaguaje - cross

1 Q. Mr. Piaguaje, let me show you another e-mail that you
2 produced in this case, JP 77 to JP 79. The last three pages
3 are in Spanish.

4 This is another e-mail exchange, sir, you had,
5 correct, with Luis Yanza?

6 A. Yes.

7 Q. Directing your attention to the bottom of the first page,
8 starting with "the main purpose of this workshop," you
9 attended, Mr. Piaguaje, this workshop on December 3 and
10 December 4, 2010, right?

11 A. Let me try to remember. Yes, it seems so.

12 Q. And that workshop was about getting ready to receive money
13 in the Lago Agrio Chevron case, right?

14 MR. GOMEZ: Objection.

15 THE COURT: Overruled.

16 A. Yes. It was for all manner of work, of planning work.

17 Q. Planning to manage the money from a judgment in the Lago
18 Agrio Chevron case, right?

19 A. Yes, it seems so. That's what I recall.

20 Q. And if you look at the second page, sir, you see how Luis
21 Yanza's title is coordinator of the Texaco case, the ADF? Do
22 you see that?

23 A. Yes.

24 Q. What was Mr. Yanza's responsibilities as the coordinator of
25 the Texaco case, the ADF?

DBI8CHE3

Piaguaje - cross

1 MR. BRODSKY: Withdrawn.

2 THE COURT: I think you may be misreading the
3 document.

4 Q. Does it say there, Luis Yanza, coordinator of the Texaco
5 case?

6 MR. BRODSKY: Let me withdraw that question and ask a
7 better one.

8 Q. What were Mr. Yanza's responsibilities as coordinator of
9 the Texaco case at asamblea meetings?

10 A. Luis Yanza's job?

11 Q. Yes.

12 A. He coordinates us, the indigenous nations, when we have
13 assemblies, so that we can express our views.

14 Q. Is it fair to say --

15 THE COURT: Let him finish.

16 MR. BRODSKY: I apologize.

17 A. For the indigenous nations and the settlers.

18 Q. Is it fair to say, Mr. Piaguaje, that Mr. Yanza and Mr.
19 Fajardo set the agenda for the asamblea meetings?

20 A. Yes. Well, at the first meeting, we decide what we are
21 going to address, and then Luis Yanza, he is our coordinator,
22 he does that. My lawyer, Pablo Fajardo, deals with the legal
23 aspects, and as far as the legal aspects, I don't know much
24 about that. That's up to the attorneys.

25 Q. Sir, is it fair to say the executive committee of the

DBI8CHE3

Piaguaje - cross

1 asamblea made the decisions, according to you, about how the
2 funds that are raised to finance the judgment for collection of
3 the judgment are spent?

4 A. Yes.

5 Q. Did the asamblea determine what percentage of the judgment
6 was going to go to the attorneys?

7 A. Yes.

8 Q. Did the asamblea determine how much money Mr. Donziger
9 would be paid on a monthly basis?

10 A. No.

11 Q. Did the asamblea determine how much money Fajardo, Pablo
12 Fajardo was paid on a monthly basis?

13 A. No.

14 Q. Before the Lago Agrio judgment was issued in February 2011,
15 did the asamblea discuss whether to give Pablo Fajardo 10
16 percent of the total fees going to the lawyers?

17 MR. GOMEZ: Objection. It assumes facts.

18 THE COURT: Overruled.

19 A. No.

20 Q. Did you know, prior to the issuance of the Lago Agrio
21 judgment in February 2011, that Pablo Fajardo signed an
22 agreement with the representative of the asamblea giving Pablo
23 Fajardo the right to 10 percent of all of the attorneys' fees?

24 A. No.

25 MR. BRODSKY: May I approach, your Honor?

DBI8CHE3

Piaguaje - cross

1 THE COURT: You may.

2 Q. Mr. Piaguaje, let me show you Plaintiff's Exhibit 559A for
3 identification, which is a multipage document. The first 11
4 pages, sir, are in Spanish and pages 13 through 23 are in
5 English.

6 MR. BRODSKY: For the record, the title of the
7 document is retainer agreement. The Bates number is Woods
8 45416 to 45426.

9 Q. Have you ever seen this document before?

10 A. No.

11 Q. Let me ask you to turn to page 10 of the document, the
12 signature page.

13 I would like you to turn to the signature page in the
14 English version, sir. So it's page 22 of 23.

15 MR. BRODSKY: Your Honor, with your permission, may I
16 help the witness?

17 THE COURT: Yes.

18 Q. It's also on the screen, Mr. Piaguaje.

19 Do you recognize that distinct signature of Ermel
20 Gabriel Chavez Parra, president it says of Frente de Defensa de
21 la Amazonia?

22 A. I don't recall the signature very well because I haven't
23 seen it much.

24 Q. Do you know who Ermel Gabriel Chavez Parra is?

25 A. Ermel Chavez, I know who he is.

DBI8CHE3

Piaguaje - cross

1 Q. Who is he?

2 A. Well, I have seen that Ermel Chavez was the president of
3 the Amazon Defense Front.

4 Q. Have you seen Luis Yanza's signature in the past?

5 A. Of course I have seen it, but I don't recall what his
6 signature looks like.

7 Q. What about Pablo Fajardo?

8 A. Likewise, I couldn't say because I don't know it very well.

9 Q. Did Mr. Chavez ever mention to the asamblea, prior to the
10 issuance of the judgment in the Lago Agrio case in February
11 2011, that Pablo Fajardo was going to receive 10 percent of the
12 attorneys' fees in the case?

13 A. I didn't hear that.

14 Q. Did Mr. Yanza ever tell the Asamblea de Afectados por
15 Texaco that he was going to sign an agreement giving Pablo
16 Fajardo 10 percent of the attorneys' fees in the case?

17 A. I didn't hear that.

18 Q. Now, Mr. Donziger never provided you and the Lago Agrio
19 plaintiffs with an accounting of how money was spent by him in
20 connection with the Lago Agrio Chevron case, right?

21 MR. DONZIGER: Objection. Vague. Lago Agrio
22 plaintiffs.

23 THE COURT: Mr. Friedman is the lawyer on this
24 witness.

25 MR. DONZIGER: I don't know if it is clear.

DBI8CHE3

Piaguaje - cross

1 THE COURT: Well, it is clear, because he is the one
2 who has indicated no objection to various exhibits. If Mr.
3 Friedman has an objection, I will hear it. You know this rule.
4 We set it up before the trial.

5 MR. DONZIGER: I represent another party per the
6 Court's order.

7 THE COURT: Mr. Friedman is the lawyer.

8 Mr. Friedman, do you have a problem?

9 MR. FRIEDMAN: I guess I would say vague, your Honor.

10 THE COURT: I guess I would say overruled.

11 MR. BRODSKY: Your Honor, can I ask the reporter to
12 read back the question.

13 THE COURT: Yes.

14 (Record read)

15 A. No.

16 Q. Did you ever ask Mr. Donziger for an accounting of how he
17 spent the money in connection with the Lago Agrio Chevron case?

18 A. No.

19 Q. Did the asamblea ever ask Mr. Donziger for an accounting of
20 how he spent funds raised in connection with the Lago Agrio
21 Chevron case?

22 MR. GOMEZ: Objection, your Honor. During his
23 service?

24 THE COURT: He is capable of answering to the best of
25 his knowledge.

DBI8CHE3

Piaguaje - cross

1 A. I have not heard that.

2 Q. Did you ever hear of the Amazonia Recovery Limited?

3 A. From whom?

4 Q. From anybody at the asamblea.

5 A. Because of this trial?

6 Q. Have you ever heard of a company called Amazonia Recovery
7 Limited ever?

8 A. No.

9 Q. Did you hear from anyone at the asamblea, including
10 Mr. Yanza and Mr. Fajardo, that an entity was going to be
11 formed in Gibraltar that was going to receive the money from
12 the Lago Agrio Chevron judgment?

13 A. Yes. What we have set up is a trust that would, if we win,
14 would manage the money that we would receive.

15 Q. Pablo Fajardo told you this?

16 A. Well, yes, Pablo Fajardo, yes. If we win, if we win money
17 from this, to be able to manage it properly, we set up a fund
18 so it would be a good accounting and good management of the
19 money.

20 Q. Did you participate in any discussion with Mr. Fajardo or
21 others at the asamblea that any money received from the Lago
22 Agrio Chevron judgment would be managed in a trust outside of
23 Ecuador?

24 A. No, in Ecuador itself.

25 Q. Are you aware one way or the other whether -- withdrawn.

DBI8CHE3

Piaguaje - cross

1 Who told you that the money would be received in
2 Ecuador as opposed to outside of Ecuador?

3 MR. GOMEZ: Objection. It assumes facts.

4 THE COURT: The witness just testified that the trust
5 was set up to handle the money and it would be in Ecuador.
6 Overruled.

7 A. Could you please repeat the question?

8 Q. Who told you that any money received from the Lago Agrio
9 Chevron judgment would be managed in a trust in Ecuador itself?

10 A. Well, we have the coordinators. You have Luis Yanza and
11 you have Humberto Piaguaje as coordinators, and they inform us
12 of what is going on, because for my part I don't know anything
13 about this so they inform us.

14 MR. BRODSKY: May I approach, your Honor?

15 THE COURT: Yes.

16 Q. I am showing you, Mr. Piaguaje, two exhibits, Plaintiff's
17 Exhibit 7701 and Plaintiff's Exhibit 7700.

18 If we take the first one, 7701 first, it's Bates
19 labeled JRIZACK 35 through 42, and the first eight pages are in
20 Spanish and pages 10 through 17 are in the original English.

21 Have you ever seen this document before, sir?

22 A. No.

23 Q. Did you, sir, have any knowledge that 21 million, more than
24 \$21 million has been spent in connection with the Lago Agrio
25 litigation by your attorneys between 2007 and 2013?

DBI8CHE3

Piaguaje - cross

1 MR. GOMEZ: Objection. It assumes facts.

2 THE COURT: Sustained as to form.

3 Q. Are you aware, sir, of how much money has been spent in the
4 Lago Agrio Chevron case and related litigation by Mr. Donziger
5 and those working with him between 2007 and 2013?

6 A. No.

7 Q. In looking at Plaintiff's Exhibit 7700, would you take a
8 moment to look at the Spanish portion? This is Bates number
9 JRIZACK 14 -- it's got different Bates numbers on it, but we
10 will just go with, at the top it says Steven Donziger &
11 Associates. It has an address in New York, New York.

12 On the first page it has the date of February 2, 2012.
13 And then it has a different date every month from February 2012
14 through July 2012.

15 Have you ever seen this document before, Mr. Piaguaje?

16 A. No.

17 Q. Did you know Mr. Donziger was receiving \$35,000 a month
18 from January 2012 through at least July 2012 in professional
19 service fees?

20 MR. FRIEDMAN: I would object. I don't think that
21 fact has been established.

22 THE COURT: Sustained as to form.

23 MR. BRODSKY: If I can offer this document subject to
24 connection, 7700 and 7701.

25 THE COURT: Any objection?

DBI8CHE3

Piaguaje - cross

1 MR. FRIEDMAN: To offering the document, no.

2 MR. GOMEZ: Subject to connection.

3 THE COURT: All right. They are both received subject
4 to connection.

5 (Plaintiff's Exhibits 7700 and 7701 received in
6 evidence)

7 Q. Mr. Piaguaje, if you look at the first page of 7700, in
8 Spanish, you see where it says Steven Donziger & Associates at
9 the top?

10 A. This here?

11 Q. Yes.

12 Did you know, sir, that Mr. Donziger received \$35,000
13 a month from at least February 2012 through July 2012 in
14 professional service fees?

15 MR. FRIEDMAN: Objection again, your Honor.

16 THE COURT: Sustained as to form.

17 Q. Were you aware, sir, of how much Mr. Donziger received per
18 month from February 2012 to July 2012 in professional service
19 fees?

20 A. No.

21 MR. FRIEDMAN: I would object as to form.

22 THE COURT: That's not objectionable as to form, but
23 it might be helpful and more expeditious if counsel remembered
24 that in the practice of law, there can sometimes be a
25 difference between billed and received, like in most other

DBI8CHE3

Piaguaje - cross

1 economic activities. After you're out of the U.S. attorney's
2 office a couple of more years, you will remember.

3 MR. BRODSKY: I never did a securities fraud case,
4 your Honor. That was a joke for the record, a bad one.

5 Q. Mr. Piaguaje, were you aware that Mr. Donziger and
6 associates charged \$35,000 a month in professional service fees
7 each month from February 2012 through at least July 2012?

8 MR. FRIEDMAN: Object, your Honor, on form.

9 THE COURT: What is the objection? Obviously, you can
10 see its authenticity. So it's in. It looks like a bill from
11 Mr. Donziger. And who do you suppose that bill would be
12 rendered to other than the Lago Agrio plaintiffs?

13 (Continued on next page)

DBILCHE4

Piaguaje - cross

1 MS. FRIEDMAN: Well, that's exactly the point, your
2 Honor. I don't think it's clear who that bill is rendered to
3 and --

4 THE COURT: Do you have another candidate?

5 MS. FRIEDMAN: Well, there's not even -- I don't
6 think -- my understanding of the source of these documents,
7 your Honor, is a -- it's not actually an accountant, but
8 Mr. Rizack, who kept various financials for Mr. Donziger. I
9 don't even know, I don't think it's been established these were
10 ever even sent.

11 THE COURT: It seems to me that the document is
12 sufficient to permit the question. And then if you want to
13 deal with it in some other way, that's your privilege, of
14 course.

15 MS. FRIEDMAN: All right.

16 A. No.

17 MR. BRODSKY: Your Honor, I was going to go to a
18 different part. Happy to do it now. I'll go forward.

19 Q. Mr. Piaguaje, can you turn back to your witness statement,
20 Defendant's Exhibit 1800. We'll put it up on the screen for
21 you. Let me direct your attention to paragraph 40, which is on
22 page 7. Do you see where it says I have -- withdrawn.

23 Directing your attention to that paragraph,
24 Mr. Piaguaje, what did you mean by "ratify"?

25 A. It would be to repeat again it means.

DBILCHE4

Piaguaje - cross

1 Q. Did you choose -- I'm sorry.

2 Did you choose that word, Mr. Piaguaje, or did your
3 lawyer choose that word, ratify?

4 A. My attorney.

5 Q. What did you mean, what court rules are you talking about
6 in paragraph 40 where you say violation of court rules by
7 anyone?

8 A. With the rules it means, how can you explain this, well,
9 you have to follow -- you have to follow what is being done,
10 for example.

11 Q. Were you referring to court rules in Ecuador or court rules
12 in the United States or both?

13 A. Well, in Ecuador.

14 Q. Let me ask you to turn to paragraph 18, page 4. The first
15 sentence there, what did you mean by extort money?

16 A. To lie.

17 Q. Let me ask you to turn to paragraph 36, page 6. When you
18 wrote this, sir, in paragraph 36, you meant, of course, that
19 you've never had knowledge of actions taken by Mr. Donziger
20 prior to Chevron filing its complaint against you in 2011,
21 right?

22 A. Once again?

23 Q. Sir, did you, when you wrote this that you'd never had any
24 knowledge of actions taken by Mr. Donziger in New York, did you
25 mean you don't have any personal knowledge?

DBILCHE4

Piaguaje - cross

1 A. No. I'm aware that he's supporting with this part of the
2 trial.

3 Q. Since the complaint against you by Chevron and --
4 withdrawn.

5 Since the complaint by Chevron against you and others
6 was filed, you've learned about the documentary film Crude,
7 right?

8 A. What do you mean, if I had seen the movie Crude?

9 Q. Did you, sir, in your deposition, did you view a portion of
10 the outtakes or of the movie Crude?

11 A. The photographs?

12 Q. Did you watch any movie, a video clip during your
13 deposition, sir?

14 A. Where, in Lima?

15 Q. Yes.

16 A. No.

17 Q. Let me direct your attention to paragraph 31. You were a
18 plaintiff, sir, in the Aguinda v. Texaco case filed in this
19 very courthouse in Manhattan, New York, in 2003, right?

20 THE COURT: I think, Mr. Brodsky, you've got the year
21 wrong by about a decade.

22 MR. MASTRO: '93.

23 MR. BRODSKY: Thank you, your Honor.

24 Q. You were a plaintiff in the Aguinda v. Texaco case filed in
25 this very courthouse in 1993?

DBILCHE4

Piaguaje - cross

1 THE COURT: Let me help you a little further, sir.
2 This courthouse didn't exist in 1993.

3 MR. BRODSKY: I meant metaphorically, your Honor.

4 THE COURT: Let's stick to the real analog world.

5 MR. BRODSKY: I'll move on, your Honor. I'll move on.

6 Q. Mr. Piaguaje, let me direct your attention to other
7 paragraphs. Paragraph 18, page 4, last sentence, prior to
8 Chevron complaining.

9 Sir, when did you learn Chevron was complaining about
10 your attorneys intimidating or pressuring a judge?

11 A. I don't know the date.

12 Q. Was it in 2011?

13 A. Yes, after the judgment.

14 Q. When Chevron filed this complaint against you and others?

15 A. For example, yes, here where it says, yes, exactly.

16 Q. And in paragraph 19, is your answer the same, that you
17 learned about Chevron's complaining about your attorneys
18 drafting a complaint against an Ecuadorian judge when the
19 allegations were filed against you and others?

20 MR. GOMEZ: Objection, vague.

21 THE COURT: Rephrase it.

22 Q. In paragraph 19 where you state prior to Chevron's
23 complaining about it, do you see that, the "it" is what you
24 mentioned, correct, that your attorneys, that you never
25 authorized your -- withdrawn.

DBILCHE4

Piaguaje - cross

1 That you learned Chevron was complaining your
2 attorneys drafted a complaint against an Ecuadorian judge,
3 correct?

4 THE COURT: Sustained as to form. Please, a cleaner
5 question.

6 MR. BRODSKY: Sorry.

7 THE COURT: It's hard enough to get it in English.

8 Q. Paragraph 20, do you see that, Mr. Piaguaje, did you learn
9 that Chevron was complaining that your attorneys put pressure
10 over the judge presiding over the Lago Agrio case when Chevron
11 filed allegations against you and others?

12 A. Yes.

13 Q. In paragraph 21, did you learn about Chevron's allegation
14 that your attorneys threatened to file a complaint against
15 Judge Yanez unless your attorneys -- unless Judge Yanez allowed
16 the plaintiffs to waive the judicial inspections when Chevron
17 filed its complaint against you and others?

18 A. Let's see. I can't answer because I'm not understanding
19 the question very well.

20 THE COURT: Let's take our lunch break. 2 o'clock,
21 please.

22 (Luncheon recess)

DBILCHE4b

AFTERNOON SESSION

2:09 p.m.

THE COURT: There's a matter that I want to discuss before we resume and the witness should leave the room for the time being.

(Witness not present)

THE COURT: I received over the lunch hour a request from Chevron for an order to show cause with respect to the hard drives, hard drive, or, I think to be more precise, the images of the hard drive of Mr. Moncayo's computer. Among other things, the papers represent that Mr. Gomez is now representing Mr. Moncayo.

First of all, is that right, Mr. Gomez?

MR. GOMEZ: That's correct, your Honor. I was informed yesterday that we are out of funds to pay for Mr. Russell Yankwitt to continue representation. Given that the amount of work involved has exceed our expectations, there being no other person that could step in, I've elected to step in. And I had a discussion with Mr. Russell yesterday evening at 11 p.m. to understand what the current status is of the reviews and to arrange for transfer of the file today.

THE COURT: Has the hard drive been imaged?

MR. GOMEZ: The hard drive was copied. And my understanding, your Honor, is that a firm, RVM, has possession of the drive and is indexing its contents. As of last night, I

DBILCHE4b

1 recall seeing an email that that process was still underway and
2 was expected to be completed at some point today, but I don't
3 know that it's been completed yet or when it's expected to be
4 completed exactly.

5 THE COURT: And there are two copies or one?

6 MR. GOMEZ: My understanding is that there are I
7 believe three copies, your Honor: one that's filed under seal
8 with the court last week, one in the possession of RVM, and one
9 that went back with Mr. Moncayo.

10 THE COURT: So you're telling me that one is with the
11 clerk of the court; is that right?

12 MR. GOMEZ: That's my understanding, your Honor, that
13 it was filed under seal last week.

14 THE COURT: And the indexing, tell me what that's
15 about.

16 MR. GOMEZ: I haven't had any of these communications,
17 your Honor. My understanding is that there is a vendor that
18 plaintiff has agreed to pay for who has received the one of the
19 copies of the drives and is required to index, essentially
20 create a list of all of the computer files that are on the
21 drive.

22 THE COURT: And that's RVM.

23 MR. GOMEZ: That's RVM.

24 THE COURT: All right. And where is it intended that
25 this index go?

DBILCHE4b

1 MR. GOMEZ: My understanding is that index was to have
2 gone to Mr. Russell Yankwitt for him to use in his review of
3 the contents of the drive.

4 THE COURT: And where is Mr. Moncayo?

5 MR. GOMEZ: Mr. Moncayo is in Ecuador.

6 THE COURT: All right. Now, Mr. Mastro, I read your
7 proposed order. You're asking me to order various people or
8 organizations who are not parties to this case to do things.

9 MR. MASTRO: Well, the difficulty, your Honor, is that
10 an organization called Earth Rights is claiming some kind of
11 privilege claim. We don't know how they possibly could. But,
12 you know, we're trying to deal with these issues so that we get
13 the documents in a timely way to be able to use in these
14 proceedings. It's also the case, your Honor, so we've spelled
15 out in our application why we think they have no rights and
16 they haven't tried to appear here.

17 THE COURT: I understand that. I understand that.
18 But they're not even parties to the case.

19 MR. MASTRO: I understand.

20 THE COURT: There's no standing here.

21 MR. MASTRO: They have been very litigious in the
22 past, your Honor, in trying to obstruct discovery of Amazon
23 Watch and otherwise. So, therefore, we felt we needed to make
24 application to the Court about being able to receive these
25 documents, including, your Honor, the emails which were also

DBILCHE4b

1 imaged but not deposited with the Court. And Mr. Yankwitt told
2 us last night that he was prepared to produce emails and a
3 privilege log this morning. So that's something that should be
4 able to go forward forthwith, but for Earth Rights which we
5 think has no understanding here saying, oh, we should have to
6 review it first.

7 THE COURT: If, as, and when they intervene in this
8 case, I'll deal with any assertions they may make. I would
9 simply say this. All concerned ought to take very careful
10 legal advice before anything further happens.

11 Mr. Gomez, you are directed forthwith, as soon as you
12 leave this courtroom today, to complete whatever review you
13 feel you need to make on behalf of Mr. Moncayo and, if
14 Mr. Moncayo has any privileges to assert, to do it as you see
15 fit and forthwith. And I am going to entertain an application,
16 to which you will have an opportunity to respond, and it may be
17 orally, to direct you forthwith to turn over any responsive
18 materials as to which no privilege is claimed and to move on an
19 extremely expedited schedule as to anything else.

20 Do you understand me?

21 MR. GOMEZ: I understand, your Honor.

22 THE COURT: All right. Let's proceed. Let's get the
23 witness back.

24 MR. BRODSKY: Just for your information on scheduling,
25 your Honor, I have maybe 15, 20 minutes left.

DBILCHE4b

Piaguaje - cross

1 THE COURT: Thank you.

2 (Witness present)

3 THE COURT: All right. The witness is reminded he's
4 still under oath.

5 Let's proceed, Mr. Brodsky.

6 MR. BRODSKY: May I approach, your Honor?

7 THE COURT: Yes.

8 BY MR. BRODSKY:

9 Q. I'm showing you, Mr. Piaguaje, Plaintiff's Exhibits 2241
10 through 2247 and 6730 for identification. Would you take a
11 moment to look at those photographs.

12 Mr. Piaguaje, these are photographs, correct, from
13 your Facebook account?

14 A. Yes.

15 Q. And you updated your Facebook page frequently, correct?

16 A. When, when I leave where there is a internet signal.

17 Q. So in, for example, Plaintiff's Exhibit 6730 for
18 identification, those are photographs that you uploaded during
19 your trip here late last week?

20 A. Yes.

21 Q. And you access the internet to upload these photographs,
22 correct?

23 A. Yes, in Facebook.

24 Q. And on a regular -- withdrawn.

25 When you have the ability to access the internet, you

DBILCHE4b

Piaguaje - cross

1 know how to do that, correct?

2 A. A little.

3 MR. BRODSKY: Your Honor, we offer 2241 through 2247
4 and 6730.

5 MR. GOMEZ: Your Honor, I have an objection to these
6 documents on the grounds of relevance.

7 THE COURT: The relevance, Mr. Brodsky?

8 MR. BRODSKY: At least in two respects. First, I
9 think they reflect evidence of a sophistication in terms of
10 uploading and using and accessing the internet. And, your
11 Honor, reasonable inferences can be drawn from that that if
12 Mr. Piaguaje wanted to learn information about the case or the
13 allegations or what steps are being taken or the Court's
14 findings, he can do that.

15 And, second, these are all uploaded by him in Spanish,
16 and I think they're his messages in Spanish which reflect that
17 that's the language that he's using when he's uploading images
18 to his Facebook account.

19 MR. GOMEZ: Your Honor, for one, I don't think the
20 images establish the kind of understanding of the internet that
21 one would need to conduct searches of various items using
22 search engines. I think they're two different things, or at
23 least the questioning hasn't established that he possesses that
24 kind of expertise in terms of use of the internet.

25 And, two, with respect to the language, I think

DBILCHE4b

Piaguaje - cross

1 Mr. Piaguaje has been testifying today in Spanish. I don't
2 think there's a dispute that he speaks and understands the
3 language.

4 THE COURT: Well, actually he said earlier that he
5 spoke it a little or understood it a little, something to that
6 effect.

7 MR. GOMEZ: Yes, that's correct, your Honor. I don't
8 think that the photographs or Facebook pages one way or the
9 other really add to that particular testimony.

10 THE COURT: That all goes to the weight. They're all
11 received.

12 (Plaintiff's Exhibits 2241 through 2247 and 6730
13 received in evidence)

14 Q. Mr. Piaguaje, just a few final questions focusing on the
15 period of late 2010.

16 Do you recall attending asamblea meetings in the
17 latter half of 2010?

18 A. I do not remember.

19 Q. Do you remember --

20 MR. BRODSKY: Well, may I approach, your Honor?

21 THE COURT: Yes.

22 Q. Let me show you, Mr. Piaguaje, Plaintiff's Exhibit 7019 for
23 identification, Bates labeled LAP1660 through 1662. And the
24 first few pages, Mr. Piaguaje, are in English. And if you go
25 to the back, the last three pages are the Spanish original.

DBILCHE4b

Piaguaje - cross

1 Does this refresh your recollection, Mr. Piaguaje,
2 regarding topics of conversation at asamblea meetings in late
3 2010?

4 A. Well, I don't remember.

5 Q. If I can direct your attention to the first page of the
6 minutes where it says confirmation of quorum and direct your
7 attention to OISE. Do you recognize what OISE is?

8 A. Yes.

9 Q. What is it?

10 A. That's the indigenous organization of the Secoya of
11 Ecuador.

12 Q. And at this time in 2010, you were the delegate from OSIE,
13 correct?

14 A. Yes, from June on.

15 Q. From June 2010 through 2012?

16 A. Yes.

17 MR. BRODSKY: We offer 7019, your Honor.

18 THE COURT: Received without objection.

19 (Plaintiff's Exhibit 7019 received in evidence)

20 Q. And directing you to the third page, at the top of the
21 page, do you remember Mr. Yanza presenting a proposal of
22 support for Steven Donziger?

23 A. No.

24 Q. Does this document refresh your recollection at all of a
25 discussion in late 2010 at asamblea meetings regarding attacks,

DBILCHE4b

Piaguaje - cross

1 so-called attacks on Mr. Donziger?

2 A. I'm sorry, I didn't hear it very well. Could you repeat
3 the question.

4 Q. Does this document refresh your recollection at all that
5 there was discussion at asamblea meetings in late 2010 about
6 Chevron's allegations relating to Steven Donziger?

7 A. Yes. Humberto Piaguaje commented that to me.

8 (Continued on next page)

DBI8CHE5

Piaguaje - cross

1 Q. And the asamblea issued an agreement of support for Mr.
2 Donziger?

3 A. I don't know. I don't know.

4 MR. BRODSKY: May I approach for the final time, your
5 Honor?

6 THE COURT: Yes.

7 Q. Let me show you, Mr. Piaguaje, a document that you
8 produced. It's Plaintiff's Exhibit 6703. The first part is in
9 English. The document you produced starts from pages 6 through
10 9 in Spanish and it's Bates number JP 3 through JP 6.

11 Do you remember producing this document, Mr. Piaguaje?

12 A. Yes.

13 Q. This is an informational bulletin put out by the assembly
14 of the affected by Texaco?

15 A. Yes.

16 Q. Directing your attention to the third page, paragraph 4.
17 We will put it up on the screen for you, too, Mr. Piaguaje.

18 Does this refresh your recollection, Mr. Piaguaje,
19 that the asamblea expressed support for Mr. Donziger in late
20 2010?

21 A. Well, at that time, I wasn't aware of this. When I was
22 asked, I gave this document but I didn't have a thorough
23 knowledge of it.

24 Q. You don't recall reading the document at the time?

25 A. Well, yes, about struggling for 17 years or fighting for 17

DBI8CHE5

Piaguaje - cross

1 years, but not much more detail than that.

2 MR. BRODSKY: No further questions, your Honor.

3 THE COURT: Thank you.

4 Redirect, Mr. Gomez.

5 MR. GOMEZ: Before I begin, for the sake of
6 completeness, Mr. Brodsky made reference to Plaintiff's Exhibit
7 6407R. In particular, Mr. Piaguaje's response to
8 interrogatories number 6 and 11. I would ask that the entirety
9 of those responses be moved into evidence for the Court's
10 consideration as opposed to just portions or one sentence.

11 THE COURT: Any problem, Mr. Brodsky?

12 MR. BRODSKY: When Mr. Gomez says the entirety, if he
13 means the portion below supplemental response to the
14 interrogatory and above the next interrogatory, no objection.

15 MR. GOMEZ: That's what I mean.

16 THE COURT: Those additional portions are received.

17 Was there an intention to offer 6703?

18 MR. BRODSKY: Yes, your Honor. We offer that. I
19 believe I may have omitted offering 559A.

20 THE COURT: One thing at a time.

21 Is it offered for the truth or is it offered simply as
22 a statement?

23 MR. BRODSKY: Simply as a statement.

24 THE COURT: 6703 is received not for the truth.

25 (Plaintiff's Exhibit 6703 received in evidence)

DBI8CHE5

Piaguaje - cross

1 THE COURT: What was the other one?

2 MR. BRODSKY: 559A is the agreement between Mr.
3 Fajardo, Mr. Yanza, and the leader of the asamblea.

4 THE COURT: Any objection?

5 MR. GOMEZ: No objection.

6 THE COURT: Received.

7 (Plaintiff's Exhibit 559A received in evidence)

8 REDIRECT EXAMINATION

9 BY MR. GOMEZ:

10 Q. Goods afternoon, Mr. Piaguaje.

11 A. Good afternoon.

12 Q. Mr. Piaguaje, who is Humberto Piaguaje?

13 A. He is the vice coordinator or sub-coordinator of the
14 assembly of the affected.

15 Q. Is that the position he held when you were a member of the
16 executive committee or the position he holds presently?

17 A. Yes.

18 Q. Did Humberto Piaguaje hold the position of vice
19 sub-coordinator of the asamblea when you were on the executive
20 committee in year 2010 through 2012?

21 A. Yes.

22 Q. Does Mr. Piaguaje, Mr. Humberto Piaguaje, hold the position
23 of vice sub-coordinator of the asamblea at present?

24 A. No. Now he is the coordinator.

25 Q. What is the responsibility of the sub-coordinator of the

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Piaguaje - redirect

1 asamblea?

2 MR. GOMEZ: Withdrawn.

3 Q. What is the responsibility of the coordinator of the
4 asamblea?

5 A. That person coordinates all matters related to this trial,
6 that is, he is a liaison or a link with the attorneys, as well
7 as with us, with the communities.

8 Q. Is he responsible for preparing the agendas of the asamblea
9 meetings?

10 MR. BRODSKY: Objection. Leading.

11 THE COURT: Sustained.

12 Q. What are the specific tasks that he is required to perform
13 as coordinator?

14 A. Well, as the category, I am not very familiar. It's not a
15 position that I myself have held. But he works with the
16 indigenous communities and with the attorneys deciding or
17 working with us to decide what we will do, the presidents of
18 all of the indigenous nations and the settlers as well.

19 Q. Why was the asamblea created?

20 MR. BRODSKY: Objection.

21 THE COURT: Sustained.

22 Q. What is the purpose of the executive committee in the
23 asamblea?

24 A. The executive committee holds meetings with representatives
25 of all of the indigenous nations as well as the cooperative,

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Piaguaje - redirect

1 part of the affected, the persons affected.

2 Q. How many persons sat on the executive committee of the
3 asamblea when you were a member of it between 2010 and 2012?

4 A. I don't know how to tell you exactly how many. There is a
5 representative from all of the indigenous nationalities, as
6 well as the coordinator and the representative of the Amazon
7 Defense Front. So exactly I don't know, 10, 12.

8 Q. You mean 10 to 12 people?

9 A. Yes.

10 Q. Which indigenous nationalities were represented on the
11 executive committee on the asamblea when you were a member of
12 it between 2010 and 2012?

13 A. The Kofan and the Siona, the Kichwa, the Siekopai, my own,
14 the settlers. Those all meet in the committee.

15 Q. Who did the settlers represent?

16 A. Themselves.

17 Q. How were they selected, the settlers, to participate on the
18 executive committee?

19 A. Each one of the cooperatives was given a chance to be
20 represented on the executive committee.

21 Q. When you say cooperative, what are you referring to?

22 A. In Ecuador, when settlers get together and form a group in
23 a community of sorts, that's what a cooperative is. We use the
24 word comunidad in Ecuador really to refer to indigenous people
25 so it's a cooperative.

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Piaguaje - redirect

1 Q. Can you identify some of the cooperatives that were
2 represented in the executive committee when you were a member
3 between 2010 and 2012?

4 A. Yes. I know the communities, but I don't know the names of
5 all of the cooperatives, the settler communities.

6 Q. How were the representatives of the indigenous groups who
7 sat on the executive committee of the asamblea selected?

8 MR. BRODSKY: Objection. Foundation.

9 THE COURT: Sustained.

10 Q. Who selected the representatives of indigenous groups to
11 sit on the executive committee of the asamblea?

12 MR. BRODSKY: Same objection.

13 THE COURT: Sustained.

14 MR. GOMEZ: What is the objection?

15 THE COURT: There is no foundation. No showing that
16 he has personal knowledge.

17 Q. Sir, how were you selected to sit on the executive
18 committee of the asamblea?

19 A. Because I was president, that's why I had to join in the
20 executive committee.

21 Q. At the time that you were sitting on the executive
22 committee of the asamblea, were there representatives of other
23 indigenous nations sitting on that committee?

24 A. Of other indigenous nationalities?

25 Q. Yes.

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Piaguaje - redirect

1 A. Yes.

2 Q. How were they selected to participate on this committee?

3 MR. BRODSKY: Objection.

4 THE COURT: Sustained. It's the same question you
5 have asked twice before.

6 Q. Mr. Piaguaje, do you know how representatives of other
7 indigenous groups were selected to sit on the executive
8 committee of the asamblea between 2010 and 2012?

9 A. Yes. Because each community, they will elect who their
10 candidate is, who becomes like a president, and that president
11 is on the executive committee representing that community.

12 Q. Mr. Piaguaje, was a quorum always taken at every executive
13 committee meeting that you attended?

14 A. Yes.

15 Q. How was that done?

16 A. It had to be one more than half.

17 Q. Whose responsibility was it to identify sufficient
18 participation to constitute a quorum for a meeting of the
19 executive committee?

20 A. Well, those of us who are there can see ourselves because
21 we know who is there, and we can tell if there is more than
22 half of the number and put in from among ourselves. We appoint
23 somebody to do that.

24 Q. Did you ever read the minutes of previous executive
25 committee meetings?

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Piaguaje - redirect

1 A. I didn't, but I did hear when others were reading them.

2 Q. When an executive committee meeting of the asamblea
3 started, were the minutes of a previous executive committee
4 meeting read and approved?

5 A. Yes.

6 Q. When you were a member of the executive committee between
7 2010 and 2012, you testified in response to Mr. Brodsky's
8 questions that a trust was discussed. Do you remember that
9 testimony?

10 A. Yes.

11 Q. What was discussed at the executive committee meetings that
12 you attended between 2010 and 2012 regarding a trust?

13 MR. BRODSKY: Objection. Time period, your Honor.

14 THE COURT: No. He said 2010 to 2012. Overruled.

15 A. Well, we began working to build together with those
16 affected and together with our supporters, the coordinator, the
17 attorneys and other colleagues, participants, representatives
18 of the Amazon Defense Front, and we understood that we needed
19 to set up a trust in order to manage money and not waste it and
20 focus on the projects for which we had started this lawsuit and
21 the four issues that we had set out to address.

22 Q. Who was supposed to manage the trust to which you refer?

23 A. Who started using that word?

24 Q. No. Who was supposed to manage the trust that you are
25 talking about?

DBI8CHE5

Piaguaje - redirect

1 A. Well, what we talked about in the executive committee was
2 that we would need to hire outside persons, professionals, but
3 that they couldn't just spend the money any way, and that there
4 should be one person from each indigenous nationality, as well
5 as a settlers there, to have oversight over that.

6 Q. Has the assembly identified specific people to perform
7 oversight of the trust that you were talking about?

8 MR. BRODSKY: Objection.

9 THE COURT: Sorry. Did you say objection?

10 MR. BRODSKY: Yes.

11 THE COURT: Ground.

12 MR. BRODSKY: Relevance.

13 THE COURT: Why is it relevant?

14 MR. GOMEZ: Your Honor, there is an allegation --

15 THE COURT: And why wasn't it in the witness
16 statement?

17 MR. GOMEZ: First of all, there is an allegation that
18 all of these decisions are being made or at least directed by
19 Mr. Donziger. I would like to elicit testimony from the
20 witness that contradicts that allegation.

21 As for the reason it was not in the witness statement,
22 your Honor, the questions about the trust were raised on cross.
23 It revealed to me that the witness possesses a greater
24 understanding of this than I once imagined, and I would like to
25 ask him questions to elicit his knowledge.

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Piaguaje - redirect

1 THE COURT: Confine it to the relevant time period.

2 BY MR. GOMEZ:

3 Q. Mr. Piaguaje, after 2011, did the asamblea select specific
4 individuals to provide oversight of a trust that you were
5 talking about?

6 A. Yes.

7 Q. Can you identify who those persons were?

8 A. Well, I only know as to my indigenous community.

9 Q. Who would that be, sir?

10 A. His name is Felipe Lusitande.

11 MR. GOMEZ: Your Honor, may I confer with co-counsel?

12 THE COURT: Yes.

13 MR. GOMEZ: Nothing further.

14 THE COURT: Mr. Friedman?

15 MR. FRIEDMAN: Nothing for us.

16 THE COURT: Recross?

17 MR. BRODSKY: No, your Honor.

18 THE COURT: All right. Thank you, Mr. Piaguaje. You
19 are excused.

20 (Witness excused)

21 MR. FRIEDMAN: Can we have a side bar before we call
22 our next witness?

23 (At the side bar)

24 MR. FRIEDMAN: Your Honor, Mr. Donziger wanted to
25 address the Court, and I thought it would be more appropriate

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1 that he do it at the side bar than in open court, if that's OK.

2 MR. DONZIGER: I don't know if it's more appropriate
3 to do it at the side bar.

4 I am the next witness. Really, two issues. One is my
5 witness statement is in. Chevron has a motion to strike
6 portions of it. So there is that issue. I would like to get
7 some clarity on that before I testify.

8 The second issue is we would like to do a relatively
9 brief direct before they start on cross, on the theory that my
10 credibility is obviously very much at issue. The Court allowed
11 Judge Guerra to put in a statement and also testify on direct
12 before the cross.

13 So I would like to ask the Court to allow Mr. Friedman
14 to do a relatively brief direct to start before Chevron does
15 the cross, but I also would like some clarity on the issue of
16 what I am going to be allowed to testify about in terms of what
17 was in my statement or the scope of it given their motion.

18 THE COURT: Define relatively brief.

19 MR. DONZIGER: A couple of hours.

20 MR. FRIEDMAN: I was going to say 45 minutes.

21 THE COURT: The answer is no. I have ruled on that.
22 Obviously, it would have been different had you complied with
23 the directions about your witness statement, but you didn't.

24 As to the other, what I am prepared to say now,
25 inasmuch as you have filed your witness statement yesterday or

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1 possibly even this morning, and thus, I have had relatively
2 little time to consider Chevron's motion and your counsel
3 hasn't even responded to it, I guess I will do this.

4 Mr. Friedman, do you want to address the motion
5 briefly now?

6 MR. FRIEDMAN: Yes. I don't know that we need to do
7 this at side bar. I have notes to address it.

8 THE COURT: Go ahead now.

9 MR. FRIEDMAN: Your Honor, here are the main points in
10 opposition to Chevron's brief.

11 Chevron has alleged extortion. As I understand the
12 law of extortion, it is incumbent upon Chevron to prove that
13 there was no valid claim to the damages that were supposedly
14 being extorted from Chevron or trying to be extorted, and also
15 has to prove that Mr. Donziger did not believe, or did not
16 believe reasonably in good faith, that the plaintiffs had a
17 valid claim to damages.

18 I think the bulk, as I remember it, the bulk of
19 Chevron's motion is addressed to issues relating to
20 contamination and to the corporate relationship between Texaco,
21 Chevron and Petroecuador. All of that goes to the point of Mr.
22 Donziger having a good faith belief that there was in fact a
23 valid claim for the Ecuadorian plaintiffs for the money he was
24 supposedly trying to extort. So that's the heart of our
25 opposition. I can't recall if there were other points in their

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1 brief, but I think they were mainly trying to keep out
2 contamination and legal status issues.

3 MR. DONZIGER: Can I make one quick point of
4 clarification? You might not be aware of it. My witness
5 statement was turned in Thursday evening. The statement that
6 we sent over yesterday evening was exactly the same but for one
7 paragraph at the very end.

8 THE COURT: But for your addition of a large number of
9 exhibits, which in some respects make it a significantly
10 different ball game. And that's simply where it is. Even if
11 it were last whenever, it was way late, and you have been given
12 extraordinarily great latitude, and I have no doubt that I will
13 have the opportunity to assess your credibility fully through
14 an extensive cross-examination and redirect. So that takes
15 care of that.

16 Now, what I am prepared to do right now vis-a-vis
17 Chevron's motion is this, subject to the possibility that on
18 further consideration there may be some alterations. As a
19 general matter, statements attributed in the witness statement
20 to persons other than Mr. Donziger, or references to statements
21 in writings by persons other than Mr. Donziger, will not be
22 considered for the truth of the matters asserted. All or
23 substantially all are hearsay to the extent they are offered
24 for the truth of the matters, and there is nothing in the
25 witness statement that establishes the applicability of any

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1 exception to the hearsay rule. That is not to say it
2 necessarily will be considered for nonhearsay purposes, only
3 that it will not be considered for the truth of the matters
4 asserted. I will rule on this other issue later.

5 The statement, moreover, contains and refers
6 extensively to exhibits and other materials relating to
7 environmental conditions in the Oriente. I see nothing in the
8 statement and nothing in what counsel has said or submitted to
9 suggest that any of that information is relevant if and to the
10 extent it is offered to prove the truth.

11 That's what I am prepared to say now. You will have a
12 ruling on the motion in full before very long.

13 MR. FRIEDMAN: Could I address just two quick points?

14 One, there are some exhibits listed in the witness
15 statement that are documents of Chevron's that we would ask be
16 admitted for the truth. I just wanted to make that clear.

17 THE COURT: Fair enough. That's why I left some
18 flexibility here. I can't be expected to have in mind each and
19 every exhibit referred to in there, particularly since it's
20 been a moving target as late as 8:00 this morning. I will deal
21 with that in the fullness of time. But you wanted guidance,
22 you have got it.

23 (Continued on next page)
24
25

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1 (In open court)

2 THE COURT: Why don't we take our afternoon break
3 before we start.

4 (Recess)

5 THE COURT: Next witness, Mr. Friedman.

6 MR. FRIEDMAN: Steven Donziger, your Honor.

7 STEVEN DONZIGER,

8 called as a witness by the defendants,

9 having been duly sworn, testified as follows:

10 THE DEPUTY CLERK: State your name for the record.

11 THE WITNESS: Steven Donziger.

12 MR. FRIEDMAN: May I approach the witness, your Honor?

13 THE COURT: You may.

14 DIRECT EXAMINATION

15 BY MR. FRIEDMAN:

16 Q. Mr. Donziger, do you recognize Defendants' Exhibit 1750?

17 A. I do.

18 Q. Could you tell us what it is?

19 A. It's my witness statement.

20 Q. Who prepared it?

21 A. I did.

22 Q. Who signed it?

23 A. I did.

24 Q. Is it true and accurate to the best of your ability?

25 A. Yes, it is.

DBI8CHE5

Donziger - direct

1 MR. FRIEDMAN: I move into evidence DX 1750.

2 MR. MASTRO: Your Honor, subject to the motion to
3 strike that we have already made in so many respects, we have
4 objected to major portions of it.

5 THE COURT: Received subject to the motion.

6 (Defendant's Exhibit 1750 received in evidence)

7 MR. FRIEDMAN: Pass the witness, your Honor.

8 MR. MASTRO: Thank you, your Honor.

9 CROSS-EXAMINATION

10 BY MR. MASTRO:

11 Q. We meet again, Mr. Donziger. Good afternoon.

12 Sir, am I correct that you only served on us last
13 night around 6:30 a final version of your witness statement,
14 the declaration that was just offered into evidence, correct,
15 sir?

16 A. Yes.

17 Q. And that you served on us a draft of that statement on
18 Thursday evening, around 8:00, correct, sir?

19 A. That's correct.

20 Q. In the evening, correct?

21 A. Yes.

22 Q. But you had already given it out, that draft, to the press
23 before you ever gave it to us or to the Court, correct, sir?

24 A. No.

25 Q. Did you not give your statement to The New York Times the

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Donziger - cross

1 day before or earlier before you gave it to us or to the Court?

2 A. I gave an earlier version to The New York Times.

3 Q. Thank you for that clarification. I appreciate it.

4 Am I correct that you yourself describe yourself as
5 someone who could have been a propagandist?

6 A. I don't know.

7 Q. You recall saying that on the Crude outtakes, sir, that you
8 could have been a propagandist?

9 A. No.

10 Q. We will refresh your recollection later.

11 Mr. Donziger, this is not the first time you have
12 testified, is it, sir, in this case?

13 A. No.

14 Q. You also gave a deposition in your 1782 proceeding,
15 correct?

16 A. Many days, yes.

17 Q. Sir, you prepared yourself to give that testimony in your
18 1782 proceeding, correct?

19 A. I don't understand your question.

20 Q. You prepared yourself to give testimony at your deposition
21 in your 1782 proceeding, correct? You didn't just go in cold,
22 you prepared, correct?

23 A. I prepared with my then counsel.

24 Q. And you prepared responses to give to questions in your
25 1782 proceeding, correct, sir?

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Donziger - cross

1 A. Well, I did a preparation where I tried to think of
2 truthful responses to questions that I expected to be posed.

3 Q. Isn't it a fact, sir, that one of the responses you
4 prepared for yourself to give when you were about to give
5 testimony then was to respond to questions, "It's possible, but
6 I don't think so"?

7 A. If that were to be an accurate response, yes, I would give
8 that response.

9 Q. Didn't you also prepare yourself to give the response, "I
10 guess it's possible, but to the best of my recollection I
11 didn't"?

12 A. If that would be accurate, yes, I would give that response.

13 Q. I am going to show you, sir, what has been marked as
14 Plaintiff's Exhibit 2457.

15 MR. MASTRO: May I approach, your Honor?

16 THE COURT: Yes.

17 Q. I am referring you, Mr. Donziger, to the very top part of
18 the page where it says, "Comments: It's possible, but I don't
19 think so. I guess it's possible, but to the best of my
20 recollection I didn't." Do you see that, sir?

21 A. Yes.

22 Q. You wrote this document yourself to prepare yourself to
23 give testimony in a courtroom, correct, sir?

24 A. I did write the document myself.

25 Q. And you didn't write that paragraph in response to any

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Donziger - cross

1 particular question, did you, sir?

2 A. I wrote it in response to what could be questions that I
3 anticipated.

4 Q. Sir, simple question. You didn't write that paragraph
5 about giving those responses in response to any specific
6 question, did you, sir?

7 MR. GOMEZ: Objection. Asked and answered.

8 THE COURT: Overruled.

9 A. I wrote it in response to specific questions that might
10 come up that that would be an appropriate response to.

11 Q. You didn't cite any specific questions that you had in mind
12 to give those responses to, "It's possible, but I don't think
13 so. I guess it's possible, but to the best of my recollection
14 I didn't," correct, sir?

15 MR. GOMEZ: Objection. The document speaks for
16 itself.

17 MR. MASTRO: I will withdraw, your Honor.

18 Q. Mr. Donziger, can you tell the Court how many times during
19 your deposition you responded to questions with, it's possible,
20 but I don't think so, or, I guess it's possible, but to the
21 best of my recollection I didn't, in words or substance? Can
22 you tell the Court how many times you did that in your
23 deposition?

24 A. Given that I was deposed 19 days, and I don't have the 19
25 days and thousands of pages in front of me, no, I can't answer

DBI8CHE5

Donziger - cross

1 that question right now.

2 Q. Was it more than 100 times, sir?

3 A. I have no idea, sir.

4 Q. More than 200 times?

5 A. I don't know.

6 MR. MASTRO: I will move on, your Honor.

7 Q. Mr. Donziger, referring to your witness statement, you
8 claim that Pablo Fajardo has been the "lead lawyer" in the Lago
9 Agrio case "from 2005 until the present"?

10 THE COURT: Can I have the paragraph, please?

11 MR. MASTRO: Paragraph 10.

12 Q. That's your testimony to this Court, correct, sir?

13 A. Yes.

14 Q. And that he is the sole representative, that's your
15 testimony?

16 A. Before the court in Ecuador, yes.

17 Q. And that you have "served on the case at the pleasure of
18 the plaintiffs and their representative," correct, sir?

19 A. Yes.

20 Q. And their representative is Mr. Fajardo, you serve at his
21 pleasure, that's your testimony here, correct?

22 A. I serve at the pleasure of the clients and Mr. Fajardo as
23 their representative.

24 Q. So you work for Mr. Fajardo, he doesn't work for you,
25 that's your testimony?

DBI8CHE5

Donziger - cross

1 A. In that time frame, yes.

2 Q. 2005 to the present, correct?

3 A. Yes.

4 Q. Sir, I want to ask you a few questions about that.

5 First, in terms of serving at the pleasure of the Lago
6 Agrio plaintiffs. You were just here for Mr. Piaguaje's
7 testimony, weren't you, sir?

8 A. Yes.

9 Q. So you know that he just told the Court in his statement
10 that, "I have never had the direct authority, discretion or
11 control of the actions taken by Steven Donziger."

12 That's paragraph 36 of his statement. Isn't that
13 correct, sir, that's the testimony he just gave to the Court?

14 A. I don't know. I don't have his statement in front of me,
15 but if it is, it's not what I'm talking about.

16 Q. And you know that Mr. Camacho, the other defendant in this
17 case, also a Lago Agrio plaintiff, has testified that he has
18 never even met you, correct, sir?

19 THE COURT: Mr. Mastro, they have said whatever they
20 have said.

21 Q. Mr. Donziger, I want to ask you about how you have
22 described yourself since 2005.

23 Isn't it a fact that you have described yourself since
24 2005 as "the lead lawyer in the class action trial that seeks
25 damages for a cleanup, *Aguinda v. Chevron Texaco*, currently

DBI8CHE5

Donziger - cross

1 being heard by the superior court in Nueva Loja, in Ecuador,
2 before German Yanez."

3 You have described yourself since 2005 as the lead
4 lawyer in that class action trial, haven't you, sir?

5 A. At times I have.

6 Q. And you have described yourself since 2005 as "the person
7 primarily responsible for putting this team together and
8 supervising it," correct, sir?

9 A. This team not being the Ecuadorian team; the team outside
10 of Ecuador, yes.

11 Q. Sir, haven't you also described yourself since 2005 as
12 "playing an integral role in designing the trial strategy and
13 working closely with the local team of lawyers," correct, sir?

14 A. I don't know.

15 Q. Sir, the integral role in designing the trial strategy,
16 that would be the Lago Agrio Chevron trial, correct, sir?

17 A. Well, not necessarily.

18 Q. So let me put up on the screen Plaintiff's Exhibit 806 and
19 go to page 21.

20 This is a book proposal that you prepared yourself
21 since 2005, correct, sir?

22 A. I am seeing one paragraph. I don't know if there is a
23 complete document.

24 Q. Let's hand him the complete document.

25 MR. MASTRO: May I approach, your Honor?

DBI8CHE5

Donziger - cross

1 THE COURT: Yes.

2 Q. On the first page of Plaintiff's Exhibit 806, that's an
3 e-mail from you to someone named David Kuhn, dated November 3,
4 2006, correct, sir?

5 A. Yes.

6 Q. So this is your draft book proposal, correct?

7 A. Yes.

8 Q. Let's go, sir, to page 21 of that proposal.

9 THE COURT: Which number, counsel?

10 MR. MASTRO: It's page 21.

11 THE COURT: There are two page 21s. You're going off
12 the bottom numbers or the other numbers?

13 MR. MASTRO: I am going by the bottom numbers, your
14 Honor. Not 22. I am going on the one in the lower right-hand
15 corner.

16 THE COURT: Thank you.

17 Q. Sir, am I correct that you have described yourself as a
18 person supervising -- strike that.

19 Am I correct that you have described yourself as
20 playing an integral role in designing the trial strategy and
21 working closely --

22 THE COURT: The document says what it says. If you
23 want to read something to him and ask him something based on
24 it, go ahead. But no responsive readings.

25 Q. Where in your book proposal you refer to playing an

DBI8CHE5

Donziger - cross

1 integral role in designing the trial strategy and working
2 closely with the local team of lawyers, you are referring to
3 the trial strategy in the Lago Agrio Chevron case, correct,
4 sir?

5 A. No. Yes, but I refer in the same paragraph to Mr. Fajardo
6 as the lead lawyer.

7 Q. Sir, the lead local lawyer in the Ecuadorian case, correct?

8 A. That's an accurate description.

9 Q. Isn't it a fact that you have also described yourself since
10 2005 as being "at the epicenter of the legal, political and
11 media activity surrounding the case, both in Ecuador and in the
12 U.S," correct, sir?

13 A. I don't know if you're reading from the proposal. Feel
14 free to point it out to me and I can answer it.

15 Q. Do you recall describing yourself in those terms, sir?

16 A. No.

17 Q. Sir, isn't it a fact that you wrote to Joseph Kohn in 2009
18 and described your firm's role as a primary obligation is to
19 run the case on a day-to-day basis?

20 A. I believe I did, but --

21 Q. Isn't it a fact, sir, that you described yourself as doing
22 "the overwhelming amount of work on this case"?

23 A. Yeah. But that's a very incomplete description of my
24 actual role. My role was much more nuanced than that.

25 THE COURT: Mr. Donziger, answer the questions and

DBI8CHE5

Donziger - cross

1 then stop when you have answered them. Your counsel will have
2 the opportunity on redirect to ask you anything he wants to ask
3 you to clarify.

4 Q. Isn't it a fact, Mr. Donziger, that you would give
5 directions to local counsel in Ecuador on what to do with the
6 litigation?

7 A. On occasion I would express my opinion as to what they
8 should do, and I would do it in forceful terms. It didn't
9 change the fundamental relationship, which is I worked for
10 them.

11 Q. Isn't it a fact, Mr. Donziger --

12 MR. MASTRO: And I apologize in advance, your Honor,
13 for using this language. It is not my language, his.

14 Q. But isn't it a fact, Mr. Donziger, that there were times
15 when since 2005, you gave instructions to Mr. Fajardo and other
16 local counsel in Ecuador to just get this done on time and
17 don't fuck it up?

18 A. Is your question did I say that?

19 Q. Yes.

20 A. I would often use very forceful language, yes. I don't
21 know if I said that.

22 Q. Mr. Donziger, isn't it also a fact that in your own
23 notebook, that you call a memoir, you describe personally
24 meeting privately with the Ecuadorian judges on the Lago Agrio
25 case at least eight separate times between March 2006 and May

DBI8CHE5

Donziger - cross

1 2007?

2 A. I met with judges in Ecuador when it was appropriate to do
3 so on occasion. I don't know the exact number.

4 Q. The judge in the Lago Agrio Chevron case, you document in
5 your notebook meeting with the judge overseeing the Lago Agrio
6 Chevron case privately, without Chevron present, eight separate
7 occasions between March 2006 and May 2007, correct, sir?

8 MR. GOMEZ: Objection. The document speaks for
9 itself.

10 THE COURT: Overruled.

11 A. I don't know the exact number. There were occasions that I
12 met with the judge.

13 Q. Sir, isn't it a fact that you have described yourself as
14 the cabeza on the Lago Agrio Chevron case?

15 A. I don't have any recollection of that.

16 Q. And cabeza means head, correct?

17 A. Cabeza means head in Spanish.

18 Q. That's the way Pablo Fajardo has introduced you since 2005,
19 as the cabeza on the case, correct?

20 A. I don't know. He certainly hasn't in recent years.

21 Q. Sir, I would like to show you your notebook.

22 Sir, directing your attention to page 27 of 119.

23 MR. MASTRO: That's at the bottom center of the page,
24 your Honor.

25 Q. Directing your attention to the passage, "Pablo is

DBI8CHE5

Donziger - cross

1 obviously single-handedly providing the glue to hold much of
2 the left together. Still introduces me as the cabeza of the
3 lawsuit, which I don't like, but that is fixable." Do you see
4 that, sir?

5 Do you see that, sir?

6 A. Yes.

7 Q. Does that refresh your recollection that Pablo Fajardo
8 referred to you in 2007 as the cabeza of the lawsuit?

9 A. I don't have any independent recollection other than my
10 notes.

11 Q. Now, sir, isn't it a fact that Pablo Fajardo also used to
12 refer to you as the commander-in-chief of the Ecuadorian legal
13 team?

14 A. Pablo had a lot of nicknames for me. That might have been
15 one of them.

16 Q. He did that as recently as October 2009, when the final
17 plan for the case, his words, was to be done and our
18 "commander-in-chief Steven Donziger must be at that workshop."
19 Isn't that true, sir?

20 A. I vaguely remember that, but I think he was joking.

21 Q. Sir, when you're putting together the final plan for the
22 case, he is calling you commander, and your testimony to this
23 Court is that was a joke?

24 A. We had a lot of jokes among us about authority. So I think
25 that was a joke.

DBI8CHE5

Donziger - cross

1 Q. Isn't it a fact that Mr. Fajardo referred to you as
2 commander repeatedly from 2007 to the present? Isn't that
3 true, sir?

4 A. He used the word comandante.

5 Q. Which means commander in Spanish, correct?

6 A. It was done more as a term of affection, akin to like good
7 buddy or something like that.

8 Q. Isn't it a fact since 2005, you referred to Mr. Fajardo in
9 discussions with others as "your young field lawyer in Lago"?

10 A. I don't have any recollection of that.

11 MR. MASTRO: May I approach, your Honor?

12 THE COURT: Yes.

13 Q. Mr. Donziger, this is an e-mail that you sent to Raul
14 Herrera in August 2006, correct, sir?

15 A. Yes.

16 Q. Raul Herrera was the lawyer representing the Republic of
17 Ecuador, correct?

18 A. I believe he was at that time.

19 Q. He was at Winston & Strawn, correct?

20 A. I believe so.

21 Q. When you're communicating to Raul Herrera of Winston &
22 Strawn representing the Republic of Ecuador, you called Pablo
23 Fajardo "a young field lawyer in Lago," correct?

24 A. Yes.

25 Q. Does that refresh your recollection whether that is the way

DBI8CHE5

Donziger - cross

1 you used to refer to him in the period in 2005?

2 A. No.

3 Q. Is it also the case that Mr. Fajardo only became a lawyer
4 and graduated from school sometime in 2004?

5 A. I have a recollection he became a lawyer in the early 2000s
6 and the Lago case was his first case. I don't know if it was
7 that particular year or not.

8 Q. Isn't it correct that you told Vanity Fair that Pablo
9 Fajardo only became a lawyer in 2004?

10 A. I don't recall.

11 Q. Isn't it a fact, sir, that you are the one who installed
12 Pablo Fajardo as the person to be the lead local lawyer in late
13 2005 when you and Joe Kohn were forcing Christopher Bonifaz out
14 of the case?

15 THE COURT: Sustained as to form. Break it up.

16 Q. Isn't it a fact, sir, that you're the person who directed
17 that Pablo Fajardo become the lead local lawyer in the Lago
18 Agrio Chevron case in December 2005?

19 A. I remember recommending him. I did not direct it. The
20 decision was made by others.

21 Q. At the time, you and Mr. Kohn were forcing Christopher
22 Bonifaz out of the representation, correct?

23 A. First of all, it's Cristobal Bonifaz. And the answer is,
24 no, we were not at that time.

25 Q. Am I right that you directed that Pablo become the joint

DBI8CHE5

Donziger - cross

1 counsel of record in December 2005 to take control of the case
2 within the current team -- strike that.

3 Am I correct that up until December 2005, Pablo
4 Fajardo had not been the person speaking as lead local counsel
5 in the Lago Agrio Chevron case?

6 A. I don't recall the specific dates, but at the beginning of
7 the trial he was not, and then he replaced the person who was.

8 Q. And that in December 2005, you instructed that it was
9 important for Pablo to become the joint counsel of record as
10 soon as possible to take control of the case within the current
11 team?

12 A. I don't recall.

13 MR. MASTRO: Your Honor, may I approach?

14 THE COURT: Yes.

15 MR. MASTRO: I will show the witness what has been
16 marked as Plaintiff's Exhibit 7673.

17 Q. Mr. Donziger, am I correct that this is an e-mail from you
18 to Alejandro Ponce and Pablo Fajardo, copy to Luis Yanza, dated
19 December 7, 2005?

20 A. That's correct.

21 Q. I am referring you to the bottom of the first page.

22 Does that refresh your recollection on December 7,
23 2005, that you wrote to the local Ecuadorian legal team that it
24 was "even more important for Pablo to become the joint counsel
25 of record as soon as possible to take control of the case

DBI8CHE5

Donziger - cross

1 within the current team"?

2 A. Yes.

3 Q. That was because you were upset with something that Alberto
4 Wray had just done on the case, correct, sir?

5 A. I think it was a variety of reasons, that being one of
6 them.

7 Q. Mr. Donziger, am I correct that you have been practicing
8 law for over 25 years?

9 A. No, not that long.

10 Q. You're in your early 50s, correct?

11 A. Yes.

12 Q. And Mr. Fajardo, is he even 40 years old now?

13 A. He is 40, or 41.

14 (Continued on next page)

DBILCHE6

Donziger - cross

1 Q. And, sir, am I correct that you still refer to him today as
2 local counsel, correct?

3 A. There's different descriptive terms I use and that is one
4 that I think I do use and is accurate.

5 Q. Let me ask you about financial terms between you and
6 Mr. Fajardo.

7 Am I correct that you stand to make more than three
8 times what Mr. Fajardo stands to make on a contingency fee
9 basis in this case?

10 A. I don't know.

11 MR. MASTRO: Your Honor, referring to the sanctions
12 hearing testimony, page 136, lines 10 through 13:

13 "So you make more than three times what Mr. Fajardo
14 makes on this case but you work for him. That is your
15 testimony in this court?

16 "Answer: Yes, it is."

17 Q. Now, Mr. Donziger --

18 THE COURT: Are you offering that?

19 MR. MASTRO: I am offering it as impeachment, your
20 Honor.

21 THE COURT: Is there an objection to its being
22 received?

23 MR. FRIEDMAN: Your Honor, if the whole page is put in
24 for context, there's no objection.

25 MR. MASTRO: No problem, your Honor.

DBILCHE6

Donziger - cross

1 THE COURT: Page 13 in its entirety of the sanctions
2 hearing is in.

3 Q. Mr. Donziger, am I correct that Mr. Fajardo makes
4 approximately 2,000 a month?

5 A. I don't know at this point what he makes.

6 Q. You're the person who doles out the checks to pay the
7 Ecuadorian legal team, correct, sir?

8 A. No.

9 Q. You've done that historically, haven't you, sir, you've
10 arranged for them to get their pay, correct?

11 A. Yes, but I don't dole out the checks.

12 Q. And so you know that the lawyers on your local Ecuadorian
13 team -- Mr. Fajardo, Mr. Saenz, Mr. Prieto -- make around
14 \$2,000 a month, correct?

15 A. I think that was the case at a certain point in time and I
16 think I testified to that. I don't know if that's the case
17 today.

18 Q. And, sir, you have made on this case typically 15,000 or
19 more a month, correct?

20 A. No.

21 Q. Isn't it a fact that when Joe Kohn was funding this case
22 that you made about 150,000 a year in salary during that period
23 of time up to 2009, correct?

24 A. It's roughly the case, but a lot of that money was went
25 back out to pay other people.

DBILCHE6

Donziger - cross

1 Q. So, sir, you made 150,000 a year in 2009, Mr. Fajardo made
2 about 24,000 a year in 2009, correct?

3 A. I don't know.

4 Q. So would it be fair to say that you made in a typical year
5 salary-wise on the case six or seven times more than
6 Mr. Fajardo typically made on the case, correct, sir?

7 A. It's roughly correct, but it reflects also cost of living
8 in New York as opposed to Lago Agrio.

9 MR. MASTRO: Move to strike after cost of living.

10 MR. FRIEDMAN: Your Honor, he could be allowed to
11 finish his answer before there's a move to strike.

12 THE COURT: Well, the problem is the answer is
13 supposed to be responsive and only responsive, not an argument.
14 And, therefore, the motion to strike is granted, everything
15 after it's roughly correct. You can ask him on redirect.

16 Q. Sir, I want to make sure I understand your testimony.

17 On a contingency fee basis, you make three times or
18 more what Mr. Fajardo stands to make if you collect on this
19 judgment, correct, sir?

20 A. I think that's roughly correct. I don't know his exact
21 arrangement at this point.

22 Q. And you make, you have made on this case typically six,
23 seven times more in salary each year than Mr. Fajardo has made,
24 correct, sir?

25 A. I just testified to that.

DBILCHE6

Donziger - cross

1 Q. But you say you work for him, he doesn't work for you;
2 that's your testimony?

3 A. It is.

4 Q. He must be a very generous boss, Mr. Donziger.

5 THE COURT: Let's cut it out, Mr. Mastro.

6 MR. MASTRO: I'm sorry, your Honor.

7 Q. Now let's talk about your retainer agreement and the
8 authority you have under your retainer agreement.

9 Am I correct that your retainer agreement is signed by
10 Mr. Fajardo and Mr. Yanez, correct?

11 A. Yanza.

12 Q. Withdraw that.

13 Your retainer agreement was signed in January 2011 by
14 Mr. Fajardo and Mr. Yanza, correct, sir?

15 A. I think others or another or yes.

16 Q. Your retainer agreement gives you the responsibility to
17 exercise "overall responsibility for the strategic direction of
18 the litigation and the day-to-day management of the
19 litigation."

20 Isn't that right, sir?

21 A. I don't know.

22 Q. Isn't it a fact, sir, that the litigation that you have
23 overall responsibility for the strategic direction of and
24 day-to-day management of includes Lago Agrio Chevron case, the
25 1782 actions in the United States, and this litigation,

DBILCHE6

Donziger - cross

1 correct?

2 A. No, that's not correct.

3 Q. Now, sir, I'm going to show you --

4 MR. MASTRO: May I approach, your Honor?

5 Q. -- what's been marked as Plaintiff's Exhibit 558.

6 Mr. Donziger, referring you to page 2 of this
7 document, this is your retainer agreement, correct, sir?

8 A. Yes, it is.

9 Q. This is the one you signed on January 5, 2011, correct?

10 A. It's January 2011. It does not have a date next to my
11 name.

12 Q. And the first signatory on behalf of the plaintiffs is
13 Pablo Fajardo, correct?

14 A. Yes.

15 Q. And, sir, referring you specifically to page 2,
16 subparagraph 2B, where it says that you as the plaintiffs' U.S.
17 representative are authorized "to exercise overall
18 responsibility for the strategic direction of the litigation
19 and the day-to-day management of the litigation."

20 Does that refresh your recollection as to, you know,
21 whether you have that authority under your retention agreement?

22 A. I'm going to read the other subsections real quick before I
23 answer that question, if that's okay.

24 Q. Well, while you're on it, Mr. Donziger, please also read
25 section 2BI where it says that you have authority to

DBILCHE6

Donziger - cross

1 "coordinate the overall legal strategy to pursue and defend all
2 aspects of the litigation."

3 Does that refresh your recollection, sir, whether you
4 have that authority?

5 A. Yeah, but I would say reading this it's not an accurate
6 depiction.

7 MR. MASTRO: Your Honor, move to strike after --

8 THE COURT: Everything after "yeah" is stricken.

9 Q. Sir, am I also correct, directing your attention to page 1,
10 that the litigation is defined as including the Maria Aguinda
11 v. Chevron corporation litigation, that's the Lago Agrio
12 Chevron litigation, correct?

13 A. Where are you reading from?

14 Q. Page 1. The term litigation is defined in the first three
15 paragraphs of your retention agreement, correct, sir?

16 A. Can you --

17 Q. Under witnesseth.

18 A. Okay.

19 Q. See there where it defines in the third paragraph
20 collectively all of the above are litigation, the first,
21 second, and third paragraphs, starting whereas, do you see
22 that, sir?

23 A. Yes.

24 Q. So your authority to exercise overall responsibility for
25 the strategic direction of the litigation and day-to-day

DBILCHE6

Donziger - cross

1 management of the litigation includes the Lago Agrio Chevron
2 litigation, the 1782 actions, and any related litigations,
3 including this one, correct, sir?

4 A. This contract is not an accurate depiction of my actual
5 authority.

6 Q. Sir, isn't it a fact that this contract, this retention
7 agreement can't be changed other than in writing signed by all
8 parties, correct?

9 A. I don't know.

10 Q. Have you signed any new agreements since this one that
11 alter your rights and obligations and responsibilities under
12 this agreement one whit?

13 A. There has been an alteration, yes.

14 Q. Is that something signed in writing but you altering your
15 role?

16 A. It's been signed by the plaintiffs or plaintiffs'
17 representatives.

18 Q. Now, sir, I'm going to direct you to page 10 of this
19 agreement, paragraph 13, modification in writing, "No
20 modification, amendment, waiver or release of any provisions of
21 this agreement or of any right, obligation, claim or course of
22 action arising hereunder shall be valid or binding for any
23 purpose unless in writing and duly executed by the party
24 against whom same is asserted."

25 Now, sir, you haven't signed any modification

DBILCHE6

Donziger - cross

1 amendment, waiver or release of any provision of this retention
2 agreement, correct, sir?

3 A. That is correct.

4 Q. So as far as you're concerned, under the terms of this
5 agreement, you continue to this day to have the rights,
6 responsibilities, and obligations that apply under this
7 agreement, correct?

8 A. That's not correct.

9 Q. Now, sir, let me ask you this: Aren't you also responsible
10 under this agreement for assembling and organizing the various
11 United States lawyers and law firms representing the Lago Agrio
12 plaintiffs, correct?

13 A. Yes.

14 Q. Mr. Fajardo doesn't do that, you do that, correct, sir?

15 A. I would say --

16 Q. Yes or no, sir?

17 A. I did do that. I do not do that fully at this point, no.

18 Q. Do you consider yourself to have fulfilled your obligations
19 to your clients, the Lago Agrio plaintiffs, under this
20 retention agreement?

21 A. I haven't really thought about it. I've tried my best, but
22 I don't know if I completely fulfilled all my obligations. I'd
23 have to look at it. It's been a while.

24 MR. MASTRO: Your Honor, I offer for impeachment
25 sanctions hearing, page 49, starting line 6:

DBILCHE6

Donziger - cross

1 "Q. Do you consider yourself to have fulfilled your
2 obligations to your clients, the plaintiffs, under this
3 retention agreement, sir?

4 "A. Yes, I do."

5 THE COURT: Proceed. What was the date of that
6 testimony?

7 MR. MASTRO: Your Honor, that was on April 16, 2013.

8 THE COURT: Thank you.

9 Q. Mr. Donziger, was that testimony true and correct when you
10 gave it just a few months ago, was that true and correct, yes
11 or no?

12 A. Yes, it was, but it was several months ago.

13 Q. Thank you, sir. Now, Mr. Donziger, am I correct, sir,
14 that -- strike that.

15 Is there anyone else besides Mr. Fajardo and the Lago
16 Agrio plaintiffs who you are telling this Court is your boss?

17 A. Mr. Fajardo is the person I deal with. But behind him he
18 has to answer to others who, in theory, would have authority
19 over me if they wanted to exercise it, in my opinion.

20 Q. Now, sir, am I correct that you are the person who has
21 decided how much people working on the team in Ecuador get
22 paid?

23 A. In the past I worked with the local team to, like Mr. Yanza
24 and others, to come up with amounts that we felt were
25 appropriate.

DBILCHE6

Donziger - cross

1 Q. And in Mr. Yanza's case, you not only paid him a monthly
2 salary -- correct, sir?

3 A. I didn't pay him.

4 Q. You approved of funds going to Mr. Yanza in amounts of 500
5 to 2,000 a month, correct, sir?

6 A. We would set budgets jointly and in the budget would be a
7 salary for him.

8 Q. And you also approved buying a house for Mr. Yanza, didn't
9 you, sir?

10 A. Yes.

11 Q. And you paid that out of your budget, correct, sir?

12 A. I believe, yes, I believe that came out of the budget.

13 Q. Now, sir, I want to ask you a few questions about financial
14 matters.

15 In your statement you claim that all of your efforts
16 on the Aguinda case have been to achieve a just result for your
17 clients. That's your testimony, right?

18 A. Yes.

19 Q. But this isn't a pro bono case for you, is it, sir?

20 A. No.

21 Q. You expect to get paid and you're proud of that, aren't
22 you, sir?

23 A. Yes.

24 Q. You've even referred to looking forward to getting the
25 "juicy check" from Chevron, haven't you, sir?

DBILCHE6

Donziger - cross

1 A. That was a joke.

2 Q. It's not only a term you've used, it's a term that
3 Mr. Fajardo and others on the Ecuadorian legal team have used,
4 to get juicy checks out of Chevron, correct, sir?

5 A. That originated with Mr. Callejas at a judicial inspection.

6 Q. Move to strike.

7 A. He would make a joke about it, so it's not my term.

8 THE COURT: Answer is stricken.

9 Q. Mr. Donziger, haven't you written that you dream of
10 billions of dollars on the table?

11 A. For the clients, yeah.

12 Q. And haven't you spoken openly about jacking this thing up
13 to \$30 billion if you could have, haven't you done that, sir?

14 A. I did say that, but it comes with a certain context that it
15 was always based on the amounts of money needed for a cleanup.

16 Q. Yes or no. Yes or no.

17 THE COURT: Answer is stricken after "I did say that."

18 MR. MASTRO: Again, your Honor, I apologize for having
19 to use this language, but.

20 Q. Isn't it a fact, sir, that you've described the business
21 you're in, the business of plaintiffs' law, as being about
22 "making fucking money"?

23 A. I may have, I don't know.

24 Q. Didn't you say that on the Crude outtakes as you were
25 leaving the San Francisco Chronicle after giving an interview

DBILCHE6

Donziger - cross

1 there about your case, didn't you say that?

2 A. It's possible. I don't know if I said it.

3 Q. We'll come back to it, sir.

4 Am I correct that between 2003 and 2009, Joseph Kohn
5 was funding the litigation?

6 A. During those years he was the primary funder, but not the
7 only funder.

8 Q. And am I also correct, sir, that over that period of time,
9 2003 to 2009, Mr. Kohn paid you over \$1 million in connection
10 with this case, the Lago Agrio Chevron case?

11 A. It sounds about right. I don't know exactly.

12 Q. And, sir, isn't it also the case that in 2007 and 2008 --
13 strike that.

14 Isn't it also the case that in late aughts Russ DeLeon
15 also became a funder on the Lago Agrio Chevron case?

16 A. That is correct, yes.

17 Q. And Mr. DeLeon is someone you know from school days?

18 A. Yes.

19 Q. And Mr. DeLeon now lives on Gibraltar, correct?

20 A. No.

21 Q. He's a fugitive from U.S. justice, isn't he, sir?

22 A. No.

23 Q. Isn't it a fact, sir, that in 2007 and 2008, Mr. DeLeon
24 also paid you over \$800,000?

25 A. For --

DBILCHE6

Donziger - cross

1 Q. Yes or no.

2 A. For a different matter.

3 Q. Yes or no, sir.

4 A. I don't know the exact amount.

5 Q. And isn't it a fact that you also received \$10,000 for
6 appearing in the movie Crude?

7 A. I think Mr. Berlinger bought my rights for documentary film
8 purposes and that might have been the amount of money he paid
9 me.

10 Q. And that's money you put in your pocket, correct, sir?

11 A. I don't recall.

12 Q. And am I also correct, sir, that you have by far the
13 largest contingency fee interest of any lawyer or law firm in
14 the Lago Agrio Chevron case?

15 A. No, it's not correct.

16 Q. Isn't it a fact, sir, that you have the largest contingency
17 fee interest of any lawyer in the Lago Agrio Chevron case?

18 A. No.

19 Q. Now, sir, let's break it down.

20 Is there somebody else, some other lawyer or law firm,
21 that has a larger contingency fee interest in the Lago Agrio
22 Chevron case than you?

23 A. I don't know.

24 Q. So as you sit here today, you're not aware of any other
25 lawyer or law firm that has a larger contingency fee interest

DBILCHE6

Donziger - cross

1 in the Lago Agrio Chevron case than you, correct, sir?

2 A. I don't know. I know what I have and I can estimate what
3 some others have and it's --

4 Q. Let's ask you about what you have, sir, all right.

5 Again, under your retention agreement, the total
6 contingency fee payment to go to lawyers on the Lago Agrio
7 Chevron case is 20 percent, correct, sir?

8 A. Yes.

9 Q. And under your retention agreement, you are entitled to
10 31.5 percent of that 20 percent, correct, sir?

11 A. Yes.

12 Q. So when the judgment was over \$19 billion, if the Lago
13 Agrio plaintiffs had been able to collect the entirety of the
14 judgment, you would have made approximately \$1.2 billion,
15 correct?

16 A. More or less, subtracting what I would owe other people.

17 Q. And, sir, am I also correct that even today, after last
18 week's decision eliminating the punitive damage award, you
19 still stand to make approximately \$600 million on the Lago
20 Agrio Chevron judgment if the Lago Agrio plaintiffs are able to
21 collect on the entirety of the judgment as it now stands?

22 A. That's correct.

23 Q. Mr. Donziger, I want to ask you a few questions about
24 Amazonia Recovery Limited. That's a Gibraltar company,
25 correct, sir?

DBILCHE6

Donziger - cross

1 A. Yes.

2 Q. And you're a shareholder in that company, correct?

3 A. That's correct.

4 Q. That's because of your contingency fee interest, correct?

5 A. Yes.

6 Q. Can you tell me what percentage of the shares of Amazonia
7 Recovery Limited you have, sir?

8 A. The structure of the case was designed -- I mean the
9 structure of that entity was designed to reflect the
10 contingency fee equity in the lawsuit, so it's roughly the
11 equivalent.

12 Q. And you own shares in Amazonia Recovery Limited because the
13 expectation is that amounts collected on the judgment will be
14 kept there and then able to be distributed to the lawyers based
15 on their different contingency fee interests, correct, sir?

16 A. Not really.

17 Q. Well, sir, I want to break it down because I want to
18 understand it.

19 You own shares in Amazonia Recovery Limited, correct?

20 A. Yes.

21 Q. You can't tell the Court what number of shares you own in
22 Amazonia Recovery Limited?

23 A. I don't know the number. It's the equivalent of what the
24 contingency fee interest was before it was created.

25 Q. So --

DBILCHE6

Donziger - cross

1 THE COURT: Is that 31 and a half percent,
2 Mr. Donziger?

3 THE WITNESS: No, it was 31 and a half percent of the
4 20 percent.

5 THE COURT: Thank you.

6 Q. So let me make sure I understand the structure of the
7 pay-out on the judgment.

8 Am I correct that off the top of the judgment or any
9 moneys that are collected come payment of expenses and fees,
10 correct, sir?

11 A. That's my understanding.

12 Q. And you have a substantial amount of expenses and fees
13 you're still claiming off the top, correct?

14 A. Yes.

15 Q. And you have someone you've described as a quote/unquote
16 accountant, Mr. Rizack, correct, sir?

17 A. Yes.

18 Q. Who you referred us to to try to get documents about what
19 expenses you had and what you're claiming, correct?

20 A. Yes.

21 Q. And you know that Mr. Rizack didn't produce all of those
22 records to us, that privilege claims were asserted, correct,
23 sir?

24 A. I know we asserted privilege claims, but I don't know how
25 it ended up. I know you got documents from him.

DBILCHE6

Donziger - cross

1 Q. And you know that your cocounsel, Mr. Friedman, agreed to a
2 502 stip so we could see the rest of the documents, he agreed
3 to that last night, you know that, sir, correct?

4 A. No.

5 Q. You know, sir, that from Mr. Friedman because when he asked
6 you this morning for permission to sign the 502 stip, you told
7 him he couldn't sign it, correct, sir?

8 MR. FRIEDMAN: Your Honor, I'll object on
9 attorney-client privilege.

10 MR. MASTRO: It was disclosed to me, your Honor. It
11 was hardly a secret.

12 MR. FRIEDMAN: Well, we have a different idea of what
13 was disclosed and, your Honor, I guess you could take testimony
14 from me and Mr. Mastro but that -- I'd object on relevance
15 grounds at this point.

16 Q. Mr. Donziger, are you aware that Mr. Rizack just today,
17 while we were here in court, midday, produced more financial
18 records to us about your accountant in the Lago Agrio Chevron
19 case (indicating)?

20 A. I don't know what you mean by accountant (indicating).

21 Q. He's not really an accountant --

22 A. I'm not aware --

23 Q. He's not really an accountant, correct?

24 A. No, he is not an accountant.

25 Q. But you, you're aware that just today midday he produced

DBILCHE6

Donziger - cross

1 more documents to us, correct?

2 A. No.

3 Q. You're aware that he's still withholding hundreds of
4 documents on alleged privilege grounds, correct, sir?

5 A. No.

6 Q. Am I correct that you're not willing to sign a 502 stip to
7 allow us to see the rest of those records?

8 A. Sir --

9 MR. FRIEDMAN: Excuse me, your Honor. I would object
10 on relevance grounds. I'm happy to take this issue up, but I
11 don't think it's appropriate in the context of
12 cross-examination. I'd be happy to tell you what our position
13 is.

14 THE COURT: Well, if there's going to be an
15 application with respect to it, I'll be happy to hear what your
16 position is. But at the moment the question, it seems to me,
17 goes to whether the witness is prepared to have whatever the
18 evidence is come out, whether it's privileged or not, and it
19 seems to me relevant, therefore.

20 Q. Mr. Donziger, please answer the question.

21 A. What's the question?

22 Q. The question is whether you're willing to enter into a 502
23 stip so that Mr. Rizack will allow us to review the rest of
24 your financial records relating to the Lago Agrio case as to
25 which you've claimed privilege up until now.

DBILCHE6

Donziger - cross

1 A. Sir, I can't answer that. I'd have to consult with my
2 counsel. I don't know what the implications of that are. I
3 have not talked to my counsel about that, so I can't answer
4 that until I talk to my counsel. Sorry.

5 MR. MASTRO: Your Honor, may we approach the side bar
6 for a moment on this point?

7 THE COURT: Very briefly.

8 (At the side bar)

9 MR. MASTRO: Your Honor, we are making an application
10 that because we thought we had an agreement last night. We
11 didn't move before your Honor. With Mr. Friedman we thought we
12 had an understanding under 502 stip. I was told this morning
13 that that wasn't going to happen and, you know, we think the
14 Court should direct that. There's been waiver here. There's
15 clearly no privilege as to those documents.

16 THE COURT: I'm not hearing this now.

17 MR. MASTRO: I just want to make the point that the
18 way this has played out has been to deny us having full access
19 to those records for his cross-examination. And I'm going to
20 continue to cross. I'm not asking for any latitude that way,
21 but it's been clearly designed to prevent us from having the
22 full records to be able to cross-examine him on his financial
23 mismanagement.

24 THE COURT: If, as, and when there's an application,
25 I'll deal with it. If your intention is to make it now, I'm

DBILCHE6

Donziger - cross

1 not going to hear it now. Let's continue.

2 MR. MASTRO: Thank you.

3 THE COURT: Hear it at the end of the day, if need be.

4 MR. MASTRO: Thank you, your Honor.

5 (In open court)

6 BY MR. MASTRO:

7 Q. Mr. Donziger, I'd like to show you what's been marked as
8 Plaintiff's Exhibit 7700 and Plaintiff's Exhibit 7701.

9 MR. MASTRO: May I approach, your Honor?

10 Q. Mr. Donziger, before I ask you some questions about these
11 documents, in your statement to the Court, you claim you've
12 been "operating under constant pressure of lack of resources."

13 Do you recall that, sir?

14 A. Yes, yes.

15 Q. And you've been making that complaint since the inception
16 of this RICO case back in early 2011, correct, sir?

17 A. That's correct.

18 MR. MASTRO: Did the court reporter get that?

19 Q. You have to speak up, Mr. Donziger. That's correct. Thank
20 you.

21 Mr. Donziger, can you explain to the Court what
22 Plaintiff's Exhibit 7700 is?

23 A. This was an effort by Mr. Rizack to reconstruct my
24 financials over a period of time, and it was an effort to allow
25 me to potentially be paid for months that I had never been

DBILCHE6

Donziger - cross

1 paid. So we created invoices to submit to the clients that
2 were never sent. These invoices were never sent, and they were
3 just sort of for my internal records to gain an understanding
4 of what I might be entitled to from the client should funds be
5 raised or recovery be had in the litigation.

6 Q. Is it your testimony that these invoices have never been
7 sent to the client or any other client representative?

8 A. These invoices, as far as I know, have never been sent.

9 Q. Is it your intention, if the Lago Agrio plaintiffs are able
10 to collect on their judgment, to seek reimbursement for these
11 amounts?

12 A. There is an amount of money that I put into the case
13 personally, as well as salaries that I am owed by the clients
14 that have never been paid. And, yes, I intend to get
15 reimbursed for those amounts if funds become available.

16 Q. And, sir, referring you to --

17 THE COURT: And, excuse me, and are these the amounts?

18 Q. Are these the amounts you would intend to seek
19 reimbursement of?

20 A. Mr. Rizack and I were engaged in a process to determine the
21 amounts. This is roughly accurate. I don't know if it's
22 exactly accurate and so it's roughly the amounts.

23 Q. Let's go through some of that, sir.

24 When Mr. Kohn was funding the litigation, you said you
25 were making about 15,000 a month, correct?

DBILCHE6

Donziger - cross

1 A. I think for most of the time I was making 10,000 a month.

2 Q. Between ten and 15, correct, sir?

3 A. I think it was 10,000 most of the time.

4 Q. Sir, the amounts you claim here, let's look at page 14.

5 That's the English language version of these documents.

6 The amounts you claim here every month for every one
7 of these months in 2012 is 35,000 for your professional
8 services; is that correct, sir?

9 A. That was the idea, yes, sir.

10 Q. Am I correct that in January 2012 you're claiming that you
11 spent 24,000 on transportation expenses?

12 A. I couldn't answer that question. I think at that month I
13 had that amount of transportation expenses that was
14 unreimbursed. I don't think it was from that particular month
15 only.

16 Q. And, sir, can you please explain to the Court what is the
17 difference between the 35,000 in professional services you're
18 claiming for January 2012 and the 24,000 and change you're
19 claiming for professional fees and expenses; do you know what
20 the difference is?

21 A. I think the answer is no. Mr. Rizack put this together,
22 but I certainly was not double charging for professional fees.
23 There was some other expense involved.

24 Q. And am I correct, sir, that you're claiming, as someone
25 under constant pressure of lack of resources, that in

DBILCHE6

Donziger - cross

1 January 2012 you should be owed over a hundred thousand dollars
2 in fees, services, and expenses?

3 A. Well, because I was owed that. I had no resources. I was
4 putting money out.

5 Q. Sir, let me ask you this. Can you turn to page 25 of this
6 document.

7 Can you see there, sir, these are the itemized
8 expenses for June of 2012, correct, sir, correct?

9 A. I don't know, sir. What are you looking at?

10 Q. Well, first look at page 24, and that's the potential
11 invoice that's been created for you to cover expenses in June
12 and services and fees of June 2012, correct?

13 A. Yes.

14 Q. And then the next page itemizes the expenses, correct, sir,
15 for June 2012; do you see that, sir?

16 A. I see a chart. Oh, yes, I do.

17 Q. Now, sir, can I ask you, do you see there where it says
18 purpose of meals and persons on the right-hand column, the
19 second to last one says Pablo.

20 Do you see that, sir?

21 A. Mm-hmm.

22 Q. That's Pablo Fajardo, correct?

23 A. I assume.

24 Q. And this is an expense, expenses for June 29, 2012,
25 correct, sir?

DBILCHE6

Donziger - cross

1 A. I think it's June 28.

2 Q. June 28, 2012, correct, sir?

3 A. That's what it says.

4 Q. Can you tell us what you and Mr. Fajardo were doing that
5 you had a \$443.36 breakfast on June 28, 2012 that you are
6 saying you're going to bill back to the clients later, can you
7 tell me what you were doing then?

8 MR. GOMEZ: Objection, relevance.

9 A. I can tell you what I was doing, yes.

10 THE COURT: The objection is overruled. It goes to
11 credibility.

12 Q. Can you tell me where you incurred that \$443 breakfast with
13 Mr. Fajardo?

14 A. If I remember correctly, I think we, in Quito, we hosted a
15 breakfast for the press corps.

16 Q. And, sir, can I also ask you, where it was that you had a
17 \$437 lunch on June 5 that you're now planning to bill back to
18 the Lago Agrio plaintiffs?

19 A. I don't think that's accurate. It might have been an
20 accumulation of various meals that he put in that box, but I
21 haven't checked this for accuracy.

22 Q. So you are planning to put in for \$437 for lunch on June 5,
23 2012, but that may be multiple lunches?

24 A. I don't know. You know, everything that I instructed
25 Mr. Rizack to put together was backed up by receipts and credit

DBILCHE6

Donziger - cross

1 card charges and I'm sure he could answer this, but I don't
2 know what that is for specifically. I haven't looked at it.

3 Q. We're going to come back to these, especially when we have
4 the rest of the documents.

5 Now, sir, I want to go to PX7701. Can you tell the
6 Court what that is, sir, what is that document, sir?

7 A. If I remember correctly, this is a document that I asked
8 Mr. Rizack to put together trying to reconstruct all the
9 expenditures in the case for these years.

10 Q. These are actual expenses?

11 A. Excuse me, can I finish?

12 Q. Sure.

13 A. That he could reconstruct from my records, but they
14 wouldn't necessarily be all the case expenditures because other
15 money was being spent through other sources.

16 Q. But just so we're clear, these are actual expenditures that
17 were made and paid for, correct, sir?

18 A. This was Mr. Rizack's best effort to reconstruct some
19 admittedly disorganized financial records that I had, and I
20 don't know if this is entirely accurate. I was trying to get
21 at the time at least a rough sense of what had been spent so I
22 could convey that to the clients and so I could understand it
23 myself.

24 Q. And you just testified that you've been "operating under
25 constant pressure for lack of resources" going back to the

DBILCHE6

Donziger - cross

1 inception of this RICO case at the beginning of 2011, correct,
2 sir?

3 A. That's correct.

4 Q. And am I right that -- and this is turning now to page 11
5 of 17, this is the English language version -- that from 2007
6 to 2013, you on the Lago Agrio Chevron case spent over
7 \$21.4 million, correct, Mr. Donziger?

8 A. That's roughly accurate, but it was de minimis compared to
9 our expenses.

10 Q. Sir, sir, I just asked you yes or no.

11 And, sir, I want you to go to page 16, this is 2011,
12 the year you just testified you were already operating under
13 constant pressure of lack of resources. Am I correct, sir,
14 that you on the Lago Agrio Chevron team spent over
15 \$10.4 million that year?

16 A. Well.

17 Q. Yes or no, sir?

18 A. I don't know if that's accurate. All I can say is there
19 were times during that year that I was flat-out broke and had
20 to borrow money.

21 MR. MASTRO: Move to strike, your Honor.

22 MR. FRIEDMAN: Your Honor, I think that's fairly
23 responsive to what he was asked. It wasn't a yes or no
24 question.

25 THE COURT: Denied.

DBILCHE6

Donziger - cross

1 Q. Mr. Donziger, isn't it a fact that in 2012, you on the Lago
2 Agrio Chevron team spent over \$6.4 million?

3 A. With the caveat that this is an estimate put together by
4 Mr. Rizack that is a rough approximation based on limited
5 records. That's what Mr. Rizack came up with, yes.

6 Q. Am I correct, sir, that in spring of this year, you found a
7 new funding source, a British firm, for the Lago Agrio Chevron
8 litigation, correct?

9 A. There was a new funding source, but it was found not by me
10 but by the clients, directly with the clients.

11 Q. Woodsbridge is the name of it, correct, sir?

12 A. No.

13 Q. What's the name of it, sir?

14 MR. FRIEDMAN: Your Honor, I object on relevance
15 grounds. I think funding sources at the present time don't
16 seem to have anything to do with allegations in the complaint.

17 THE COURT: What's the relevance?

18 MR. MASTRO: Your Honor, it has to do both with the
19 witness's credibility for having just sworn to your Honor that
20 he's been operating under constant pressure of lack of
21 resources. It also has to do with not only questioning his
22 credibility, but also that they have plenty of resources even
23 though he's constantly claiming he can't comply with court
24 orders because he says he has none.

25 THE COURT: What about it, Mr. Friedman?

DBILCHE6

Donziger - cross

1 MR. FRIEDMAN: I think both of Mr. Mastro's arguments
2 are that the fact that he has a funding source now relates to
3 his credibility. I don't follow that.

4 THE COURT: Well, the argument, it seems to me, is
5 pretty clear in the context of the case.

6 There was a withdrawal in May by his prior counsel
7 ostensibly on the ground that they weren't being paid. Then
8 all through the spring and summer and fall, Mr. Donziger sought
9 relief of various kinds from the Court claiming that he
10 couldn't do one thing or the other because he lacked resources.

11 Over and over again the Court said I'd be happy to
12 consider this argument if you provide sworn evidence to back up
13 your claim. Never was anything forthcoming.

14 And it seems to me that in that context, the question
15 of whether there was funding while he was seeking relief from
16 this Court on the ground that there wasn't is pertinent to
17 credibility.

18 Now, tell me why that isn't correct.

19 MR. FRIEDMAN: Well, I guess I would raise a 403
20 issue, your Honor, in the sense that Mr. Donziger obviously
21 made a decision not to give you a sworn statement and have you
22 micromanage how he was going to spend his money.

23 THE COURT: Which presupposes there was money there to
24 spend.

25 MR. FRIEDMAN: Exactly.

DBILCHE6

Donziger - cross

1 THE COURT: And the statement that there wasn't
2 perhaps wasn't the entire truth, if the premise is right.

3 MR. FRIEDMAN: Well, and, your Honor, what I'm
4 suggesting is that, you know, the money here for a year is what
5 I -- I don't want to make -- it's all relative, your Honor.
6 I've been to courts where we spent a hundred thousand dollars
7 and that seemed like all the money in the world. In this case,
8 given the way it's been litigated, even \$20 million is a drop
9 in the bucket and I've seen what Chevron has submitted to the
10 Court and so I know that.

11 So my point is this, your Honor. Unless we're going
12 to embark upon -- the Court kind of -- Mr. Donziger
13 acknowledges he's always had funding sources. The issue isn't
14 does he have funding sources.

15 THE COURT: I haven't heard that acknowledged.

16 MR. FRIEDMAN: Well, he just did.

17 THE COURT: He said that in the spring of 2013 his
18 client found a new funding source. That's exactly what he
19 said.

20 MR. FRIEDMAN: Right, right. And there has been
21 funding along the way and how it's been spent has been laid out
22 for the Court up until, say until Mr. Kecker left, you've got
23 various -- speaking of Mr. Dahlberg, your Honor, Mr. Dahlberg
24 testified to various expenditures in his report that were made
25 by our side.

DBILCHE6

Donziger - cross

1 THE COURT: I don't remember the exact language, but
2 doesn't Mr. Donziger's witness statement assert that
3 Mr. Dahlberg's testimony essentially was a fantasy or words
4 that that effect?

5 MR. FRIEDMAN: It says much of it is a fantasy, yes.

6 THE COURT: But now I'm to rely on it.

7 MR. FRIEDMAN: I'm not saying -- no. What I'm saying,
8 your Honor, is there's no question that there's been money.
9 The question is the extent of the money available to accomplish
10 and to meet the sort of litigation effort mounted by Chevron.
11 And if what Mr. Donziger did is he made a decision, at the
12 Court's prodding, said I'd be happy to consider granting you
13 relief if you want to present your funding situation to me and
14 he elected not to do that, I think that's privileged. And for
15 the present time what his funding source is, that sort of thing
16 is privileged and doesn't really relate to credibility.

17 THE COURT: I don't want to take all evening with
18 this. But when a litigant comes into court and says I have no
19 money and the question is then put, well, what's your financial
20 situation? You can't say that it's privileged. You may have
21 other arguments, but privileged isn't one of them under
22 Bilzerian and you're very well familiar with all the cases.
23 It's the sword and shield doctrine. You can't assert a
24 particular proposition and then invoke privilege to prevent
25 examination of the factual basis for the privilege.

DBILCHE6

Donziger - cross

1 Mr. Bilzerian came into court and said I'm not guilty
2 of securities fraud because I acted in good faith. And the
3 Court of Appeals said that by making that assertion, he had
4 waived any privilege there was as to what his lawyers told him
5 about the conduct with respect to which he said he was in good
6 faith. It's an exact application of that rule.

7 MR. FRIEDMAN: Here's what I think is the most
8 important argument, your Honor. It's a 403 argument and it's
9 simply this, that if you're going to take testimony on funding
10 sources, it's like saying somebody is tall or they're short.
11 It's compared to what.

12 Here when Mr. Donziger says I have inadequate
13 resources, then it's compared to what. And if we're going to
14 get into the compared to what, so be it. But that's the
15 argument I'm trying to say to the Court is do we really want to
16 go here. If you say, yes, we want to go here, we will go here.

17 MR. MASTRO: Your Honor, it's not a -- excuse me --
18 it's not a compared to what. It's the direct representations
19 made by Mr. Donziger and others on this side of the table right
20 up to the first week of this trial that they had no resources
21 to go forward, and they've never made any such showing. I
22 intend to prove that is just demonstrably false and that's why
23 I have a right to ask these questions.

24 MR. FRIEDMAN: So, your Honor, what we're going to get
25 into, if you want to go into that, is our arrangements for our

DBILCHE6

Donziger - cross

1 copy machine and how we had to do it versus what's --

2 THE COURT: I have a feeling nobody is interested in
3 your copy machine.

4 MR. MASTRO: Not going to ask about that, your Honor.

5 MR. FRIEDMAN: My point, your Honor, is if we get into
6 this and for whatever relevance it has, which I would suggest
7 is relatively minor in the big scheme of things, if we get into
8 this, then what it requires is no resources means compared to
9 what. It's not an absolute. Obviously, he has the resources
10 to buy a suit of clothes and come to court and to feed himself
11 and to make some copies. Obviously he has some resources. The
12 question is compared to what and that's the point I'm saying
13 under 403. I think we're getting pretty far afield. That's my
14 point.

15 THE COURT: I'll sleep on this one. And if anybody
16 wants to submit anything on it, I'll be happy to receive it.

17 We'll break with the witness now.

18 What if anything needs to be dealt with this evening
19 before we break?

20 MR. MASTRO: Your Honor, just two things before we go.

21 THE COURT: You can step down for now, Mr. Donziger.

22 MR. MASTRO: My colleagues remind me I should have
23 moved in exhibits, or many of them I think might already be in
24 evidence, but Plaintiff's Exhibits 169, 558, 806, 2457, 7549,
25 and 7673.

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1 I also move in 7700 and 7701 now that I -- they were
2 admitted subject to connection. I believe I have connected
3 them.

4 And finally, your Honor, I believe that the sanctions
5 hearing page that should be coming into evidence is page 136.
6 I think the record might have said 13.

7 MR. FRIEDMAN: And, your Honor, just a procedural
8 question, I would guess, though I haven't gone back and looked.

9 THE COURT: One thing at a time.

10 The correction on the sanctions page, unless someone
11 has an objection, is accepted. Any objection, page 136?

12 MR. FRIEDMAN: No, your Honor.

13 MR. GOMEZ: No, your Honor.

14 THE COURT: All right. Now.

15 MR. FRIEDMAN: That was my question though, your
16 Honor, about that procedurally. I think that's a page that's
17 been designated by Chevron as just like a deposition has been
18 designated. I think it's gone to the Court, so I'm not exactly
19 sure what we're doing when you accept that into evidence.

20 THE COURT: I think the answer is belt and suspenders,
21 is that right, Mr. Mastro?

22 MR. MASTRO: Yes. I don't think we designated the
23 entire page, your Honor. We did designate many hours of
24 Mr. Donziger's deposition testimony.

25 THE COURT: Please don't take many hours telling me

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1 things I don't need to know.

2 MR. MASTRO: No problem, your Honor.

3 THE COURT: Is there any objection as to 7549, 7673,
4 7700 or 7701 at this point?

5 MR. FRIEDMAN: No, your Honor.

6 THE COURT: They are all received.

7 MR. MASTRO: 7559.

8 THE COURT: 7559.

9 MR. MASTRO: Thank you, your Honor.

10 MR. FRIEDMAN: No objection.

11 (Plaintiff's Exhibits 7549, 7673, 7700, 7701, 7559
12 received in evidence)

13 THE COURT: We're not done yet.

14 Now, I'm glad you mentioned 169 and 806 because I had
15 a question about them. I do believe they have come in earlier,
16 but Plaintiff's Exhibit 169 is listed twice in the plaintiff's
17 exhibit list, once with a hash mark after the letter number and
18 once with the letter R after the number.

19 MR. MASTRO: Yes.

20 THE COURT: Now, the one with the hash mark bears in
21 the heading under the heading exhibit description the words for
22 identification only. But in the column in which Chevron
23 articulates the bases for admissibility, it seems obvious that
24 in some parts it is offered for the truth of the matters
25 asserted and in other parts it's not offered for the truth of

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1 the matters asserted.

2 MR. MASTRO: Yes, your Honor.

3 THE COURT: And then there are various other arguments
4 about admissibility; and the only objections made with respect
5 to it are relevance, hearsay, and privilege. The privilege has
6 already been disposed of. Relevance I'll deal with later.

7 What is the significance, if any, of the legend for
8 identification only and why are there two versions of this
9 exhibit here and what is the meaning of these two little
10 different designations?

11 MR. MASTRO: Certainly, your Honor. Sorry for the
12 confusion. What we did with the diary -- and we have a series
13 of exhibits that follow 169 that are excerpts from the diary,
14 but in originally preparing for a jury trial, we were not going
15 to offer the entire diary. But now what we have done is
16 because it is a bench trial not offer it for the truth of the
17 matters asserted, but the entirety of the diary should be
18 available to the Court. And then we have separately designated
19 particular entries that we're offering for the truth of the
20 matters asserted, your Honor, in sequence on the exhibit list.

21 THE COURT: So that would be 170 and following?

22 MR. MASTRO: Correct, your Honor. So that was the
23 intention, not to offer it for the truth, only the individual
24 parts that follow for truth.

25 THE COURT: Well, I think I understand. So 169 hash

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1 mark is the whole document.

2 MR. MASTRO: Correct, your Honor.

3 THE COURT: You're not offering that for the truth.

4 MR. MASTRO: Correct.

5 THE COURT: But in 170 and many following, you're
6 offering pieces of it for the truth.

7 MR. MASTRO: Correct, your Honor.

8 THE COURT: What's 169R?

9 MR. MASTRO: That's a redacted version, your Honor.
10 It's a combined version of all the ones that follow. So it's
11 the redacted 169 with all the little pieces that follow that we
12 marked separately as exhibits redacting.

13 THE COURT: I'm so happy I have so many copies of it.
14 And then we have 806.

15 MR. MASTRO: Same principle, your Honor.

16 THE COURT: All right. So 806 hash mark is the whole
17 document, but 806R is the part that you are offering for the
18 truth of the matters asserted.

19 MR. MASTRO: Correct, your Honor.

20 THE COURT: All right. So that takes care of those.
21 Now, 2457.

22 MR. MASTRO: It's not offered for the truth, your
23 Honor. That's one Mr. Donziger prepared his responses not to
24 remember.

25 THE COURT: Well, we can do without the sarcastic

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1 comments from both sides.

2 MR. MASTRO: Sorry, your Honor.

3 THE COURT: All right. So 2457 is received, the
4 document written by Mr. Donziger, but not for the truth of the
5 matter, right?

6 MR. MASTRO: Yes, your Honor.

7 (Plaintiff's Exhibit 2457 received in evidence)

8 THE COURT: And 558, remind me what that is?

9 MR. FRIEDMAN: The retainer agreement, your Honor.

10 MR. MASTRO: That's the retainer agreement, your
11 Honor.

12 THE COURT: All right. And unless there's objection,
13 that's received as an agreement between the parties.

14 MR. FRIEDMAN: Yes.

15 MR. MASTRO: Yes, your Honor.

16 THE COURT: Right?

17 MR. GOMEZ: Yes, your Honor.

18 THE COURT: Right, Mr. Friedman?

19 MR. FRIEDMAN: Yes, your Honor.

20 (Plaintiff's Exhibit 558 received in evidence)

21 THE COURT: Okay. That takes care of that. What else
22 tonight?

23 MR. MASTRO: Your Honor, I did want to be heard on the
24 issue with Mr. Rizack's documents.

25 THE COURT: Fire away.

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1 MR. MASTRO: Your Honor, we don't see how there could
2 at this point be any valid privilege claim, but the way we
3 proceeded in this case throughout has been 502 stip. We can't
4 get a stip apparently from defendants as Mr. Donziger won't
5 agree to let his counsel do that.

6 So I think it's within the Court's right to direct in
7 these extraordinary circumstances under 502 that we should be
8 allowed to review them without any waiver on the defendant's
9 part any privilege claim, and to the extent we wanted to offer
10 any of those documents, then the Court could rule on the
11 privilege claim then. We have both issues of crime fraud and
12 waiver that should really answer this completely.

13 MR. FRIEDMAN: Your Honor.

14 MR. MASTRO: They haven't offered any showing it's
15 privileged. Financial information in the hands of someone
16 denominated accountant.

17 MR. FRIEDMAN: Here is my understanding, your Honor,
18 based on conversations and emails with Mr. Rizack. He received
19 a subpoena for all accounting documents. He produced a bunch.
20 He told me that he had withheld some bills and at the time I
21 didn't know what they were and I was --

22 THE COURT: Bills by Rizack to Donziger or other
23 bills?

24 MR. FRIEDMAN: Lawyer bills, mostly.

25 THE COURT: Well, lawyer bills. What lawyer for whom?

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1 MR. FRIEDMAN: I'm about to say. They're some of them
2 are bills for people who were hired to do 1782, like I think
3 one is from Tallahassee or someplace. I can't remember where
4 it was from, but they're from all other the place. Some of
5 them were from vendors that weren't getting paid, like court
6 reporters.

7 So there's a variety of bills and I told him turn over
8 all the bills and he had one question about Keker's bills
9 because they were -- Mr. Keker had bills and he said what I've
10 done is I redacted the itemization and just left the totals.

11 THE COURT: This is Keker redacting or this is Rizack
12 redacting?

13 MR. FRIEDMAN: This is Rizack redacting Keker's bills.
14 And I said I don't know and I didn't see a problem with the
15 totals going in, but there might be privileges to the
16 itemization. That's what I think is in dispute. Now, I have
17 to say --

18 THE COURT: Are you telling me that the only thing in
19 dispute are the redactions from the Keker bills?

20 MR. FRIEDMAN: That is my belief. Now, if someone --
21 if I'm wrong on that, I don't have a hundred percent
22 confidence. It was a tiny bit of what I've done over the last
23 couple weeks, but that's my understanding.

24 THE COURT: You do have my sympathy, Mr. Friedman.

25 MR. MASTRO: It's the first I'm hearing that is the

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1 only thing. We don't care about the substance of the Keker
2 bills. But we understand that he's withheld, Mr. Rizack, over
3 200 separate documents. That can't be Keker bills. He wasn't
4 in the case that long.

5 MR. FRIEDMAN: I didn't see -- what he showed me total
6 was maybe 200 pages. But most of it my understanding is he was
7 going to turn over. I think the only thing we dispute is the
8 Keker itemization. If they don't want it, I think I can make a
9 call to Mr. Rizack and be done with it.

10 (Continued on next page)

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1 MR. MASTRO: I have no problem with that, your Honor,
2 and Mr. Friedman I am sure will do that. I am not asking for
3 the itemization of the Keker bills.

4 THE COURT: Is there any doubt that I have the
5 authority under 502(d) to order disclosure of the Rizack
6 materials that have been withheld, without waiver of any
7 privilege in this or any other litigation, simply for the
8 purpose of allowing Mr. Mastro to see whether he really cares
9 about any of this stuff? And if he doesn't, the whole thing
10 goes away. And if he does, then that will then get litigated.
11 Is there any doubt about my authority to do that?

12 MR. FRIEDMAN: No doubt about your authority to do
13 that.

14 THE COURT: I am ahead of you I think.

15 You confirm with Mr. Rizack what the shape of the
16 table is and you and Mr. Mastro talk. If this whole thing goes
17 away on that basis, a blessing on both your heads. If it
18 doesn't, I am ordering disclosure now under 502(d), without
19 waiver, to Mr. Mastro so that he can see whether there is
20 anything left to fight about. I am hopeful that that won't be
21 necessary, and I am hopeful that if it is necessary, it will be
22 easily and speedily resolved. But let's get it done tonight if
23 we can.

24 MR. FRIEDMAN: We should be able to.

25 THE COURT: Anything else?

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MR. MASTRO: Nothing else tonight, your Honor.

Thank you.

(Adjourned to November 19, 2013, at 9:30 a.m.)

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3 JAVIER PIAGUAJE PAYAGUAJE

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5 Cross By Mr. Brodsky2380

6 Redirect By Mr. Gomez2448

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9 Cross By Mr. Mastro2461

10 PLAINTIFF EXHIBITS

11 Exhibit No. Received

12 18002371

13 2407R, specified paragraphs2395

14 2407R2416

15 67242418

16 67142420

17 7700 and 77012430

18 2241 through 2247 and 67302443

19 70192444

20 67032447

21 559A2448

22 7549, 7673, 7700, 7701, 75592510

23 24572513

558 2513

DEFENDANT EXHIBITS

Exhibit No.	Received
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323, 323B and 3902386
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1750	2461
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